104

S. HRG. 104–550

NATIVE AMERICAN HOUSING ASSISTANCE

Y 4. IN 2/11: S. HRG. 104-550

Native American Housing Assistance,... HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 2406, TITLE VII

TO REVIEW TITLE VII OF THE OMNIBUS HOUSING REFORM LEGISLATION PASSED BY THE HOUSE WHICH PROPOSES SUBSTANTIAL REFORMS FOR HUD ASSISTANCE TO NATIVE AMERICAN PROGRAMS

JUNE 20, 1996
WASHINGTON, DC

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NATIVE AMERICAN HOUSING ASSISTANCE

THURSDAY, JUNE 20, 1996

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING JOINTLY WITH THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC.

The committees met, pursuant to notice, at 10 a.m. in room SD 538, Dirksen Senate Office Building, Hon. John McCain (chairman of the Committee on Indian Affairs) presiding.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Senator D'Amato, as I understand it, is on the Senate floor managing the nomination process for Mr. Greenspan, I'm told he'll be over as soon as he can, and that he has asked that we go ahead and start the hearing.

I extend a warm welcome to the witnesses at today's Joint Hearing of the Banking and Indian Committees, and especially to those tribal representatives who have traveled from out of town to attend this hearing.

I thank you for your presence and your efforts over the years to increase housing opportunities for your Indian communities.

I want to recognize the leadership of committee chairman Senator D'Amato and subcommittee chairman Senator Mack on Public Housing and Reform Issues. I thank each of you for your willingness to schedule this joint hearing so our two committees can work together to ensure that the housing needs of Indian people will be appropriately considered and included in any housing reform legislation sent to the President.

Our hearing today will review Title VII of the Omnibus Housing Reform Legislation passed by the House. Title VII proposes a complete overhaul of HUD assisted Native American housing programs, turning them into tribal block grants.

The housing problems confronting Indian families are far more serious than those facing non-Indians. Recent studies indicate that 28 percent of all Indian and Alaska Native families live in substandard, overcrowded housing that lacks the basic amenities of plumbing facilities, electricity and heating.

By way of comparison, less than 5½ percent of all Americans live in these conditions. More than 90,000 Native American families are estimated to be under-housed or homeless.

These problems are compounded by poverty and unemployment levels in Native American communities that are of epidemic propor-

tions. The number of Indian families with incomes below the poverty line is nearly three times the average rate for the nation as a whole. The average income of Native Americans is less than $4,500 per person per year.

HUD programs have been virtually the only major source of housing assistance available to Indian communities. Regular mortgage financing has not been available on reservations for several reasons, chief of which is the private sector's inability to adapt its lending arrangements to the unique restrictions protecting Indian trust lands.

This may soon change as we witnessed just yesterday the signing of a landmark agreement between Fannie Mae and the Navajo Nation for a $5-million pilot project to bring private lender housing loans to the reservation.

The statistics on Indian housing reveal an overwhelming need to change the status quo on how HUD delivers assistance to tribes. That's why I strongly support creating tribal block grants separate and apart from HUD's urban-oriented public housing programs.

Tribal block grants should enhance the longstanding trust relationship between the United States and Indian tribal governments.

There are several changes I will seek to make to the House-passed title.

First, I want to greatly simplify the planning and program requirements placed on tribes, even as we retain strict financial accountability.

Second, I will urge my colleagues to exempt all tribal block grant projects, not just small ones, from the wage requirements of the Davis-Bacon Act. I take this position because, in my view, Davis-Bacon wastes already scarce funds in what is mostly rural Indian country.

I'm glad to see most Indian tribes agree with me on this, and frankly I look forward to hearing Secretary Cisneros explain why HUD opposes the tribes on Davis-Bacon. I want to tell you, Mr. Secretary, if you believe in tribal self-governance and government-to-government relations, you will listen to the tribal leaders who adamantly oppose Davis-Bacon.

And you cannot come before this committee and claim that you do respect tribal sovereignty and the government-to-government relationship and still support Davis-Bacon over the objections of the Indian tribes. It's that simple.

Third, I want all regulations affecting Indians to be developed by HUD and the Indian tribes through negotiated rulemaking procedures in order to fulfill the spirit and the letter of our Federal policy of government to government relations with the Indian tribes.

I realize some tribes have concerns with a few provisions of this title. I look forward to hearing the comments of our witnesses on how the title can be improved.

I'm committed to working with my colleagues on the Banking Committee and with Indian tribes to ensure that the Indian provisions provide maximum flexibility to Indian tribes in the use of HUD funding.

I commend Congressman Lazio of New York, who did an admirable job of consulting with Indian tribes throughout the country as he developed this Indian title over the past year. I'm convinced

that this title is the best available opportunity for Indian tribes to join us in the current efforts to reform HUD assisted housing programs.

We cannot and should not accept the status quo of housing conditions in Indian country. I can think of no better response than to empower tribes through block grants consistent with longstanding principles of tribal self-determination and self-governance.

In closing, I want to especially note my appreciation to HUD Secretary Cisneros for personally appearing before this committee this morning, and commend you for the extraordinary efforts you've made to address the critical need for Indian housing.

[Text of title VII follows;]

TITLE VII—NATIVE AMERICAN HOUSING ASSISTANCE

SECTION 701. SHORT TITLE.

This title may be cited as the "Native American Housing Assistance and Self-Determination Act of 1996".

SEC. 702. CONGRESSIONAL FINDINGS.

The Congress hereby finds that—

(1) the Federal Government has a responsibility to promote the general welfare of the Nation—

(A) by using Federal resources to aid families and individuals seeking affordable homes that are safe, clean, and healthy and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow

families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a trust responsibility to protect Indian tribes;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their socio-economic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable and healthy homes is an essential element in the special role of the United States in helping tribes and their members to achieve a socio-economic status comparable to their non-Indian neighbors;

(6) the need for affordable and healthy homes on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of tribal self-governance by making such assistance available directly to the tribes or tribally designated entities.

SEC. 703. ADMINISTRATION THROUGH OFFICE OF NATIVE AMERICAN PROGRAMS.

The Secretary of Housing and Urban Development shall carry out this title through the Office of Native American Programs of the Department of Housing and Urban Development.

SEC. 704. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) AFFORDABLE HOUSING.—The term "affordable housing" means housing that complies with the

requirements for affordable housing under subtitle B. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(2) FAMILIES AND PERSONS.—

(A) SINGLE PERSONS.—The term "families" includes families consisting of a single person in the case of (i) an elderly person, (ii) a disabled person, (iii) a displaced person, (iv) the remaining members of a tenant family, and (v) any other single persons.

(B) FAMILIES.—The term "families" includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the regulations of the Secretary to be essential to their care or well-being.

(C) ABSENCE OF CHILDREN.—The temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size for purposes of this title.

(D) ELDERLY PERSON.—The term "elderly person" means a person who is at least 62 years of age.

(E) PERSON WITH DISABILITIES.—The term "person with disabilities" means a person who—

(i) has a disability as defined in section 223 of the Social Security Act,

(ii) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which (I) is expected to be of long-continued and indefinite duration, (II) substantially impedes his or her ability to live independently, and (III) is of such a nature that such ability could be improved by more suitable housing conditions, or

(iii) has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

(F) DISPLACED PERSON.—The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(G) NEAR-ELDERLY PERSON.—The term "near-elderly person" means a person who is at least 50 years of age but below the age of 62.

(3) GRANT BENEFICIARY.—The term "grant beneficiary" means the Indian tribe or tribes on behalf of which a grant is made under this title to a recipient.

(4) INDIAN.—The term "Indian" means any person who is a member of an Indian tribe.

(5) INDIAN AREA.—The term "Indian area" means the area within which a tribally designated housing entity is authorized to provide assistance under this title for affordable housing.

(6) INDIAN TRIBE.—The term "Indian tribe" means—

(A) any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975; and

(B) any tribe, band, nation, pueblo, village, or community that—

(i) has been recognized as an Indian tribe by any State; and

(ii) for which an Indian housing authority is eligible, on the date of the enactment of this title, to enter into a contract with the Secretary pursuant to the United States Housing Act of 1937.

(7) LOCAL HOUSING PLAN.—The term "local housing plan" means a plan under section 712.

(8) LOW-INCOME FAMILY.—The term "low-income family" means a family whose income does not exceed 80 percent of the median income for the area, except that the Secretary may, for purposes of this

paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the authority's findings that such variations are necessary because of unusually high or low family incomes.

(9) MEDIAN INCOME.—The term "median income" means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(10) RECIPIENT.—The term "recipient" means the entity for an Indian tribe that is authorized to receive grant amounts under this title on behalf of the tribe, which may only be the tribe or the tribally designated housing entity for the tribe.

(11) TRIBALLY DESIGNATED HOUSING ENTITY.—The terms "tribally designated housing entity" and "housing entity" have the following meaning:

(A) EXISTING IHA'S.—For any Indian tribe that has not taken action under subparagraph (B) and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 before the date of the enactment of this title that meets the requirements under the United States Housing Act of 1937,

(ii) is acting upon such date of enactment as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this title,

the terms mean such Indian housing authority.

(B) OTHER ENTITIES.—For any Indian tribe that, pursuant to this Act, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this title for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of an Indian tribe independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity. Nothing in this title may be construed to affect the existence, or the ability to operate, of any Indian housing authority established before the date of the enactment of this title by a State-recognized tribe, band, nation, pueblo, village, or community of Indian or Alaska Natives that is not an Indian tribe for purposes of this title.

(12) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development, except as otherwise specified in this title.

Subtitle A—Block Grants and Grant Requirements

SEC. 711. BLOCK GRANTS.

(a) AUTHORITY.—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this title) make grants under this section on behalf of Indian tribes to carry out affordable housing activities. Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) CONDITION OF GRANT.—

(1) IN GENERAL.—The Secretary may make a grant under this title on behalf of an Indian tribe for a fiscal year only if—

(A) the Indian tribe has submitted to the Secretary a local housing plan for such fiscal year under section 712; and

(B) the plan has been determined under section 713 to comply with the requirements of section 712.

(2) WAIVER.—The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, if the Secretary finds that an Indian tribe has not complied or can not complied with such requirements because of circumstances beyond the control of the tribe.

(c) AMOUNT.—Except as otherwise provided under subtitle B, the amount of a grant under this section to a recipient for a fiscal year shall be—

(1) in the case of a recipient whose grant beneficiary is a single Indian tribe, the amount of the allocation under section 741 for the Indian tribe; and

(2) in the case of a recipient whose grant beneficiary is more than 1 Indian tribe, the sum of the amounts of the allocations under section 741 for each such Indian tribe.

(d) USE FOR AFFORDABLE HOUSING ACTIVITIES.—Except as provided in subsection (f), amounts provided under a grant under this section may be used only for affordable housing activities under subtitle B.

(e) EFFECTUATION OF LHP.—Except as provided in subsection (f), amounts provided under a grant under this section may be used only for affordable housing activities that are consistent with the approved local housing plan under section 713 for the grant beneficiary on whose behalf the grant is made.

(f) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts received under this title for any administrative and planning expenses of the recipient relating to carrying out this title and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this title and expenses of preparing a local housing plan under section 712.

(2) CONTENTS OF REGULATIONS.—The regulations referred to in paragraph (1) shall provide that—

(A) the Secretary shall, for each recipient, establish a percentage referred to in paragraph (1) based on the specific circumstances of the recipient and the tribes served by the recipient; and

(B) the Secretary may review the percentage for a recipient upon the written request of the recipient specifying the need for such review or the initiative of the Secretary and, pursuant to such review, may revise the percentage established for the recipient.

(g) PUBLIC-PRIVATE PARTNERSHIPS.—Each recipient shall make all reasonable efforts, consistent with the purposes of this title, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved local housing plan for the tribe that is the grant beneficiary.

SEC. 712. LOCAL HOUSING PLANS.

(a) IN GENERAL.—

(1) SUBMISSION.—The Secretary shall provide for an Indian tribe to submit to the Secretary, for each fiscal year, a local housing plan under this section for the tribe (or for the tribally designated housing entity for a tribe to submit the plan under sub-

section (e) for the tribe) and for the review of such plans.

(2) LOCALLY DRIVEN NATIONAL OBJECTIVES.—A local housing plan shall describe—

(A) the mission of the tribe with respect to affordable housing or, in the case of a recipient that is a tribally designated housing entity, the mission of the housing entity;

(B) the goals, objectives, and policies of the recipient to meet the housing needs of low-income families in the jurisdiction of the housing entity, which shall be designed to achieve the national objectives under section 721(a); and

(C) how the locally established mission and policies of the recipient are designed to achieve, and are consistent with, the national objectives under section 721(a).

(b) 5-YEAR PLAN.—Each local housing plan under this section for an Indian tribe shall contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(1) LOCALLY DRIVEN NATIONAL OBJECTIVES.—The information described in subsection (a)(2).

(2) CAPITAL IMPROVEMENT OVERVIEW.—If the recipient will provide capital improvements for hous-

ing described in subsection (c)(3) during such period, an overview of such improvements, the rationale for such improvements, and an analysis of how such improvements will enable the recipient to meet its goals, objectives, and mission.

(c) 1-YEAR PLAN.—A local housing plan under this section for an Indian tribe shall contain the following information relating to the upcoming fiscal year for which the assistance under this title is to be made available:

(1) FINANCIAL RESOURCES.—An operating budget for the recipient for the tribe that includes—

(A) identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this title, including an explanation of how amounts made available will leverage such additional resources; and

(B) the uses to which such resources will be committed, including eligible and required affordable housing activities under subtitle B to be assisted and administrative expenses.

(2) AFFORDABLE HOUSING.—For the jurisdiction within which the recipient is authorized to use assistance under this title—

(A) a description of the estimated housing needs and the need for assistance for very low-income and moderate-income families;

(B) a description of the significant characteristics of the housing market, indicating how such characteristics will influence the use of amounts made available under this title for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units;

(C) an description of the structure, means of cooperation, and coordination between the recipient and any units of general local government in the development, submission, and implementation of their housing plans, including a description of the involvement of any private industries, nonprofit organizations, and public institutions;

(D) a description of how the plan will address the housing needs identified pursuant to subparagraph (A), describing the reasons for allocation priorities, and identify any obstacles to addressing underserved needs;

(E) a description of any homeownership programs of the recipient to be carried out with respect to affordable housing assisted under this

title and the requirements and assistance available under such programs;

(F) a certification that the recipient will maintain written records of the standards and procedures under which the recipient will monitor activities assisted under this title and ensure long-term compliance with the provisions of this title;

(G) a certification that the recipient will comply with title II of the Civil Rights Act of 1968 in carrying out this title, to the extent that such title is applicable;

(H) a statement of the number of families for whom the recipient will provide affordable housing using grant amounts provided under this title;

(I) a statement of how the goals, programs, and policies for producing and preserving affordable housing will be coordinated with other programs and services for which the recipient is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line; and

(J) a certification that the recipient has obtain insurance coverage for any housing units

that are owned or operated by the tribe or the tribally designated housing entity for the tribe and assisted with amounts provided under this Act, in compliance with such requirements as the Secretary may establish.

(3) INDIAN HOUSING DEVELOPED UNDER UNITED STATES HOUSING ACT OF 1937.—A plan describing how the recipient for the tribe will comply with the requirements under section 723 relating to low-income housing owned or operated by the housing entity that was developed pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937, which shall include—

(A) a certification that the recipient will maintain a written record of the policies of the recipient governing eligibility, admissions, and occupancy of families with respect to dwelling units in such housing;

(B) a certification that the recipient will maintain a written record of policies of the recipient governing rents charged for dwelling units in such housing, including—

(i) the methods by which such rents are determined; and

(ii) an analysis of how such methods affect—

(I) the ability of the recipient to provide affordable housing for low-income families having a broad range of incomes;

(II) the affordability of housing for families having incomes that do not exceed 30 percent of the median family income for the area; and

(III) the availability of other financial resources to the recipient for use for such housing;

(C) a certification that the recipient will maintain a written record of the standards and policies of the recipient governing maintenance and management of such housing, and management of the recipient with respect to administration of such housing, including—

(i) housing quality standards;

(ii) routine and preventative maintenance policies;

(iii) emergency and disaster plans;

(iv) rent collection and security policies;

(v) priorities and improvements for management of the housing; and

(vi) priorities and improvements for management of the recipient, including improvement of electronic information systems to facilitate managerial capacity and efficiency;

(D) a plan describing—

(i) the capital improvements necessary to ensure long-term physical and social viability of such housing; and

(ii) the priorities of the recipient for capital improvements of such housing based on analysis of available financial resources, consultation with residents, and health and safety considerations;

(E) a description of any such housing to be demolished or disposed of, a timetable for such demolition or disposition, and any information required under law with respect to such demolition or disposition;

(F) a description of how the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in ob-

taining employment and achieving self-sufficiency; and

(G) a description of the requirements established by the recipient that promote the safety of residents of such housing, facilitate the housing entity undertaking crime prevention measures (such as community policing, where appropriate), allow resident input and involvement, and allow for creative methods to increase resident safety by coordinating crime prevention efforts between the recipient and tribal or local law enforcement officials.

(4) INDIAN HOUSING LOAN GUARANTEES AND OTHER HOUSING ASSISTANCE.—A description of how loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes (including grants, loans, and mortgage insurance) will be used to help in meeting the needs for affordable housing in the jurisdiction of the recipient.

(5) DISTRIBUTION OF ASSISTANCE.—A certification that the recipient for the tribe will maintain a written record of—

(A) the geographical distribution (within the jurisdiction of the recipient) of the use of grant amounts and how such geographical distribution is consistent with the geographical distribution of housing need (within such jurisdiction); and

(B) the distribution of the use of such assistance for various categories of housing and how use for such various categories is consistent with the priorities of housing need (within the jurisdiction of the recipient).

(d) PARTICIPATION OF TRIBALLY DESIGNATED HOUSING ENTITY.—A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity.

(e) COORDINATION OF PLANS.—A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under subsection (d) are complied with by each such grant beneficiary covered.

(f) PLANS FOR SMALL TRIBES.—

(1) SEPARATE REQUIREMENTS.—The Secretary shall establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities. Such requirements shall waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing entities.

(2) SMALL TRIBES.—The Secretary shall define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this subtitle by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 between the Secretary and the Indian housing authority for the tribe.

(g) REGULATIONS.—The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to section 716.

SEC. 713. REVIEW OF PLANS.

(a) REVIEW AND NOTICE.—

(1) REVIEW.—The Secretary shall conduct a limited review of each local housing plan submitted to the Secretary to ensure that the plan complies with the requirements of section 712. The Secretary shall

have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

(2) NOTICE.—The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 45 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and subsection (b), the plan shall be considered, for purposes of this title, to have been determined to comply with the requirements under section 712 and the tribe shall be considered to have been notified of compliance upon the expiration of such 45-day period.

(b) NOTICE OF REASONS FOR DETERMINATION OF NONCOMPLIANCE.—If the Secretary determines that a plan, as submitted, does not comply with the requirements under section 712, the Secretary shall specify in the notice under subsection (a) the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under section 712.

(c) STANDARDS FOR DETERMINATION OF NONCOMPLIANCE.—The Secretary may determine that a plan does not comply with the requirements under section 712 only if—

(1) the plan is not consistent with the national objectives under section 721(a);

(2) the plan is incomplete in significant matters required under such section;

(3) there is evidence available to the Secretary that challenges, in a substantial manner, any information provided in the plan;

(4) the Secretary determines that the plan violates the purposes of this title because it fails to provide affordable housing that will be viable on a long-term basis at a reasonable cost; or

(5) the plan fails to adequately identify the capital improvement needs for low-income housing owned or operated by the Indian tribe that was developed pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937.

(d) TREATMENT OF EXISTING PLANS.—Notwithstanding any other provision of this title, a plan shall be considered to have been submitted for an Indian tribe if the appropriate Indian housing authority has submitted to the Secretary a comprehensive plan under section 14(e) of the United States Housing Act of 1937 (as in effect immediately before the enactment of this title) or under the comprehensive improvement assistance program under such sec-

tion 14, and the Secretary has approved such plan, before January 1, 1997. The Secretary shall provide specific procedures and requirements for such tribes to amend such plans by submitting only such additional information as is necessary to comply with the requirements of section 712.

(e) UPDATES TO PLAN.—After a plan under section 712 has been submitted for an Indian tribe for any fiscal year, the tribe may comply with the provisions of such section for any succeeding fiscal year (with respect to information included for the 5-year period under section 712(b) or the 1-year period under section 712(c)) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

SEC. 714. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

(a) PROGRAM INCOME.—

(1) AUTHORITY TO RETAIN.—Notwithstanding any other provision of law, a recipient may retain any program income that is realized from any grant amounts under this title if—

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B) the recipient has agreed that it will utilize the program income for affordable housing

activities in accordance with the provisions of this title.

(2) PROHIBITION OF REDUCTION OF GRANT.—The Secretary may not reduce the grant amount for any Indian tribe based solely on (1) whether the recipient for the tribe retains program income under paragraph (1), or (2) the amount of any such program income retained.

(3) EXCLUSION OF AMOUNTS.—The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(b)(1) IN GENERAL.—Any contract for the construction of affordable housing with 12 or more units assisted with grant amounts made available under this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and recipients shall require certification as to the compliance with the provisions of this section prior to making any payment under such contract.

(2) EXCEPTIONS.—Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

(3) WAIVER.—The Secretary may waive the provisions of this subsection.

SEC. 715. ENVIRONMENTAL REVIEW.

(a) IN GENERAL.—In order to ensure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this title, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of amounts for particular projects to recipients of assistance under this title who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. The Secretary

shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. The regulations shall provide—

(1) for the monitoring of the environmental reviews performed under this section;

(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

(3) for the suspension or termination of the assumption of responsibilities under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) PROCEDURE.—The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, at least 15 days prior to such approval and prior to any commitment of funds to such projects the recipient of grant amounts has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of subsection (c). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects

to be carried out pursuant thereto which are covered by such certification.

(c) CERTIFICATION.—A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary,

(2) be executed by the chief executive officer or other officer of the recipient of assistance under this title qualified under regulations of the Secretary,

(3) specify that the recipient has fully carried out its responsibilities as described under subsection (a), and

(4) specify that the certifying officer (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a), and (B) is authorized and consents on behalf of the recipient of assistance and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the certifying officer's responsibilities as such an official.

SEC. 716. REGULATIONS.

(a) INTERIM REQUIREMENTS.—Not later than 90 days after the date of the enactment of this title, the Secretary

shall, by notice issued in the Federal Register, establish any requirements necessary to carry out this title in the manner provided in section 717(b), which shall be effective only for fiscal year 1997. The notice shall invite public comments regarding such interim requirements and final regulations to carry out this title and shall include general notice of proposed rulemaking (for purposes of section 564(a) of title 5, United States Code) of the final regulations under paragraph (2).

(b) FINAL REGULATIONS.—

(1) TIMING.—The Secretary shall issue final regulations necessary to carry out this title not later than September 1, 1997, and such regulations shall take effect not later than the effective date under section 717(a).

(2) NEGOTIATED RULEMAKING.—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, the final regulations required under paragraph (1) shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code. The Secretary shall establish a negotiated rulemaking committee for development of any such proposed regulations, which shall include representatives of Indian tribes.

SEC. 717. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) and as otherwise specifically provided in this title, this title shall take effect on October 1, 1997.

(b) INTERIM APPLICABILITY.—For fiscal year 1997, this title shall apply to any Indian tribe that requests the Secretary to apply this title to such tribe, subject to the provisions of this subsection, but only if the Secretary determines that the tribe has the capacity to carry out the responsibilities under this title during such fiscal year. For fiscal year 1997, this title shall apply to any such tribe subject to the following limitations:

(1) USE OF ASSISTANCE AMOUNTS AS BLOCK GRANT.—Amounts shall not be made available pursuant to this title for grants under this title for such fiscal year, but any amounts made available for the tribe under the United States Housing Act of 1937, title II or subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, title IV of the Stewart B. McKinney Homeless Assistance Act, or section 2 of the HUD Demonstration Act of 1993 shall be considered grant amounts under this title and shall be used subject to the provisions of this title relating to such grant amounts.

(2) LOCAL HOUSING PLAN.—Notwithstanding section 713 of this title, a local housing plan shall be

considered to have been submitted for the tribe for fiscal year 1997 for purposes of this title only if—

(A) the appropriate Indian housing authority has submitted to the Secretary a comprehensive plan under section 14(e) of the United States Housing Act of 1937 or under the comprehensive improvement assistance program under such section 14;

(B) the Secretary has approved such plan before January 1, 1996; and

(C) the tribe complies with specific procedures and requirements for amending such plan as the Secretary may establish to carry out this subsection.

(c) ASSISTANCE UNDER EXISTING PROGRAM DURING FISCAL YEAR 1997.—Notwithstanding the repeal of any provision of law under section 501(a) and with respect only to Indian tribes not provided assistance pursuant to subsection (b), during fiscal year 1997—

(1) the Secretary shall carry out programs to provide low-income housing assistance on Indian reservations and other Indian areas in accordance with the provisions of title II of the United States Housing Act of 1937 and related provisions of law, as in effect immediately before the enactment of this Act;

(2) except to the extent otherwise provided in the provisions of such title II (as so in effect), the provisions of title I of such Act (as so in effect) and such related provisions of law shall apply to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority; and

(3) none of the provisions of title I, II, III, or IV, or of any other law specifically modifying the public housing program that is enacted after the date of the enactment of this Act, shall apply to public housing operated pursuant to a contract between the Secretary and an Indian housing authority, unless the provision explicitly provides for such applicability.

SEC. 718. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for grants under subtitle A $650,000,000, for each of fiscal years 1998, 1999, 2000, and 2001.

Subtitle B—Affordable Housing Activities

SEC. 721. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.

(a) PRIMARY OBJECTIVE.—The national objectives of this title are—

(1) to assist and promote affordable housing activities to develop, maintain, and operate safe, clean, and healthy affordable housing on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(2) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(3) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(4) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

(b) ELIGIBLE FAMILIES.—

(1) IN GENERAL.—Except as provided under paragraph (2), assistance under eligible housing activities under this title shall be limited to low-income

Indian families on Indian reservations and other Indian areas.

(2) EXCEPTION TO LOW-INCOME REQUIREMENT.—A recipient may provide assistance for model activities under section 722(6) to families who are not low-income families, if the Secretary approves the activities pursuant to such subsection because there is a need for housing for such families that cannot reasonably be met without such assistance. The Secretary shall establish limits on the amount of assistance that may be provided under this title for activities for families who are not low-income families.

(3) NON-INDIAN FAMILIES.—A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this title for a non-Indian family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) PREFERENCE FOR INDIAN FAMILIES.—The local housing plan for an Indian tribe may require preference, for housing or housing assistance provided

through affordable housing activities assisted with grant amounts provided under this title on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable local housing plan for an Indian tribe provides for preference under this subsection, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this title for such tribe are subject to such preference.

(5) EXEMPTION.—Title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 shall not apply to actions by Indian tribes under this subsection.

SEC. 722. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Affordable housing activities under this subtitle are activities, in accordance with the requirements of this subtitle, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) INDIAN HOUSING ASSISTANCE.—The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) DEVELOPMENT.—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) HOUSING SERVICES.—The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, energy auditing, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) HOUSING MANAGEMENT SERVICES.—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(5) CRIME PREVENTION AND SAFETY ACTIVITIES.—The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) MODEL ACTIVITIES.—Housing activities under model programs that are designed to carry out the purposes of this title and are specifically approved by the Secretary as appropriate for such purpose.

SEC. 723. REQUIRED AFFORDABLE HOUSING ACTIVITIES.

(a) MAINTENANCE OF OPERATING ASSISTANCE FOR INDIAN HOUSING.—Any recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 shall, using amounts of any grants received under this title, reserve and use for operating assistance under section 722(1) such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.

(b) DEMOLITION AND DISPOSITION.—This title may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in such subsection. Notwithstanding section 116, section 261 shall apply to the demolition or disposition of Indian housing referred to in subsection (a).

SEC. 724. TYPES OF INVESTMENTS.

(a) IN GENERAL.—Subject to section 723 and the local housing plan for an Indian tribe, the recipient for such tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies, leveraging of private investments under subsection (b), or any other form of assistance that the Secretary has determined to be consistent with the purposes of this title; and

(2) the right to establish the terms of assistance.

(b) LEVERAGING PRIVATE INVESTMENT.—A recipient may leverage private investments in affordable housing activities by pledging existing or future grant amounts to assure the repayment of notes and other obligations of the recipient issued for purposes of carrying out affordable housing activities.

SEC. 725. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

Housing shall qualify as affordable housing for purposes of this title only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit; and

(B) in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and

(2) except for housing assisted under section 202 of the United States Housing Act of 1937 (as in effect before the enactment of this Act), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this title, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

SEC. 726. CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS.

With respect to housing assisted with grant amounts provided under this title, the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 shall be considered to be satisfied upon certification by the recipient of the assistance to the Secretary that the combination of Federal assistance provided to any housing project is not any more than is necessary to provide affordable housing.

SEC. 727. LEASE REQUIREMENTS AND TENANT SELECTION.

(a) LEASES.—Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this title, the owner or manager of the housing shall utilize leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the owner or manager to give adequate written notice of termination of the lease, which shall not be less than—

(A) the period provided under the applicable law of the jurisdiction or 14 days, whichever is less, in the case of nonpayment of rent;

(B) a reasonable period of time, but not to exceed 14 days, when the health or safety of other residents or employees of the owner or manager is threatened; and

(C) the period of time provided under the applicable law of the jurisdiction, in any other case;

(4) require that the owner or manager may not terminate the tenancy except for violation of the terms or conditions of the lease, violation of applicable Federal, tribal, State, or local law, or for other good cause; and

(5) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the resident's household, or any guest or other person under the resident's control, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity).

(b) TENANT SELECTION.—The owner or manager of affordable rental housing assisted under with grant amounts provided under this title shall adopt and utilize written tenant selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease; and

(3) provide for (A) the selection of tenants from a written waiting list in accordance with the policies and goals set forth in the local housing plan for the tribe that is the grant beneficiary of such grant amounts. and (B) the prompt notification in writing of any rejected applicant of the grounds for any rejection.

SEC. 728. REPAYMENT.

If a recipient uses grant amounts to provide affordable housing under activities under this subtitle and, at any

time during the useful life of the housing the housing does not comply with the requirement under section 725(a)(2), the Secretary shall reduce future grant payments on behalf of the grant beneficiary by an amount equal to the grant amounts used for such housing (under the authority under section 751(a)(2)) or require repayment to the Secretary of an amount equal to such grant amounts.

SEC. 729. CONTINUED USE OF AMOUNTS FOR AFFORDABLE HOUSING.

Any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of this title to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this title and subject to the provisions of this title relating to use of such assistance.

Subtitle C—Allocation of Grant Amounts

SEC. 741. ANNUAL ALLOCATION.

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this title for the fiscal year, in accordance with the formula established pursuant to section 742, among Indian tribes that comply

with the requirements under this title for a grant under this title.

SEC. 742. ALLOCATION FORMULA.

The Secretary shall, by regulations issued in the manner provided under section 716, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this title among Indian tribes. The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

(1) The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary.

(2) The extent of poverty and economic distress within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary may specify.

The regulations establishing the formula shall be issued not later than the expiration of the 12-month period beginning on the date of the enactment of this title.

Subtitle D—Compliance, Audits, and Reports

SEC. 751. REMEDIES FOR NONCOMPLIANCE.

(a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS.—Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary shall—

(1) terminate payments under this title to the recipient;

(2) reduce payments under this title to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this title;

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply; or

(4) in the case of noncompliance described in section 752(b), provide a replacement tribally designated housing entity for the recipient, under section 752.

If the Secretary takes an action under paragraph (1), (2), or (3), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(b) NONCOMPLIANCE BECAUSE OF TECHNICAL INCAPACITY.—If the Secretary makes a finding under subsection (a), but determines that the failure to comply substantially with the provisions of this title—

(1) is not a pattern or practice of activities constituting willful noncompliance, and

(2) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this title in compliance with the requirements under this title.

(c) REFERRAL FOR CIVIL ACTION.—

(1) AUTHORITY.—In lieu of, or in addition to, any action authorized by subsection (a), the Secretary may, if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this title, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) CIVIL ACTION.—Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to

recover the amount of the assistance furnished under this title which was not expended in accordance with it, or for mandatory or injunctive relief.

(d) REVIEW.—

(1) IN GENERAL.—Any recipient who receives notice under subsection (a) of the termination, reduction, or limitation of payments under this title may, within 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) PROCEDURE.—The Secretary shall file in the court record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) DISPOSITION.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings

of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify the Secretary's findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and the Secretary shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file the Secretary's recommendation, if any, for the modification or setting aside of the Secretary's original action.

(4) FINALITY.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United State Code.

SEC. 752. REPLACEMENT OF RECIPIENT.

(a) AUTHORITY.—As a condition of the Secretary making a grant under this title on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provi-

sion of law, the Secretary may, only in the circumstances set forth in subsection (b), require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c).

(b) CONDITIONS OF REMOVAL.—The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this title.

(c) CHOICE AND TERM OF REPLACEMENT.—If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)—

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of the 60-day period beginning upon the date that the Secretary makes the determination under subsection (b), the Secretary shall act as the replacement entity until agreement is reached upon a replacement entity; and

(2) the replacement entity (or the Secretary, as provided in paragraph (1)) shall act as the tribally

designated housing entity for the tribe (or tribes) for a period that expires upon--

(A) a date certain, which shall be specified by the Secretary upon making the determination under subsection (b); or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the tribe upon making the determination under subsection (b).

SEC. 753. MONITORING OF COMPLIANCE.

(a) ENFORCEABLE AGREEMENTS.—Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this title. Such measures shall provide for (1) enforcement of the provisions of this title by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) PERIODIC MONITORING.—Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this title to assess compliance with the requirements of this title. Such review shall include on-site inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the re-

cipient submitted to the Secretary under section 754 and made available to the public.

SEC. 754. PERFORMANCE REPORTS.

(a) REQUIREMENT.—For each fiscal year, each recipient shall—

(1) review the progress it has made during such fiscal year in carrying out the local housing plan (or plans) for the Indian tribes for which it administers grant amounts; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) CONTENT.—Each report under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the recipient for such fiscal year;

(2) assess the relationship of such use to the goals identified in the local housing plan of the grant beneficiary;

(3) indicate the recipient's programmatic accomplishments; and

(4) describe how the recipient would change its programs as a result of its experiences.

(c) SUBMISSION.—The Secretary shall establish dates for submission of reports under this section, and review

such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this title.

(d) PUBLIC AVAILABILITY.—A recipient preparing a report under this section shall make the report publicly available to the citizens in the recipient's jurisdiction in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

SEC. 755. REVIEW AND AUDIT BY SECRETARY.

(a) ANNUAL REVIEW.—The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1) whether the recipient has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws, and has a continuing capacity to carry out those activities in a timely manner;

(2) whether the recipient has complied with the local housing plan of the grant beneficiary; and

(3) whether the performance reports under section 754 of the recipient are accurate.

Reviews under this section shall include, insofar as practicable, on-site visits by employees of the Department of Housing and Urban Development.

(b) REPORT BY SECRETARY.—The Secretary shall submit a written report to the Congress regarding each review under subsection (a). The Secretary shall give a recipient not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the recipient, the Secretary may revise the report and shall make the recipient's comments and the report, with any revisions, readily available to the public not later than 30 days after receipt of the recipient's comments.

(c) EFFECT OF REVIEWS.—The Secretary may make appropriate adjustments in the amount of the annual grants under this title in accordance with the Secretary's findings pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the Secretary's reviews and audits under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

SEC. 756. GAO AUDITS.

To the extent that the financial transactions of Indian tribes and recipients of grant amounts under this title relate to amounts provided under this title, such transactions may be audited by the Comptrolier General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such tribes and recipients pertaining to such financial transactions and necessary to facilitate the audit.

SEC. 757. REPORTS TO CONGRESS.

(a) IN GENERAL.—Not later than 90 days after the conclusion of each fiscal year in which assistance under this title is made available, the Secretary shall submit to the Congress a report that contains—

(1) a description of the progress made in accomplishing the objectives of this title; and

(2) a summary of the use of such funds during the preceding fiscal year.

(b) RELATED REPORTS.—The Secretary may require recipients of grant amounts under this title to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a).

Subtitle E—Termination of Assistance for Indian Tribes under Incorporated Programs

SEC. 761. TERMINATION OF INDIAN PUBLIC HOUSING ASSISTANCE UNDER UNITED STATES HOUSING ACT OF 1937.

(a) IN GENERAL.—After September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 or pursuant to any commitment entered into under such Act, for Indian housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997.

(b) TERMINATION OF RESTRICTIONS ON USE OF INDIAN HOUSING.—Except as provided in section 723(b) of this title, any housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 shall not be subject to any provision of such Act or any annual contributions contract or other agreement pursuant to such Act, but shall be considered and maintained as affordable housing for purposes of this title.

SEC. 762. TERMINATION OF NEW COMMITMENTS FOR RENTAL ASSISTANCE.

After September 30, 1997, financial assistance for rental housing assistance under the United States Housing Act of 1937 may not be provided to any Indian housing authority or tribally designated housing entity, unless such assistance is provided pursuant to a contract for such assistance entered into by the Secretary and the Indian housing authority before such date.

SEC. 763. TERMINATION OF YOUTHBUILD PROGRAM ASSISTANCE.

(a) IN GENERAL.—Subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 et seq.) is amended—

(1) by redesignating section 460 as section 461; and

(2) by inserting after section 459 the following new section:

"SEC. 460. INELIGIBILITY OF INDIAN TRIBES.

"Indian tribes, Indian housing authorities, and other agencies primarily serving Indians or Indian areas shall not be eligible applicants for amounts made available for assistance under this subtitle for fiscal year 1997 and fiscal years thereafter.".

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendments under subsection (a) shall be made on October

1, 1997, and shall apply with respect to amounts made available for assistance under subtitle D of title II of the Cranston-Gonzalez National Affordable Housing Act for fiscal year 1998 and fiscal years thereafter.

SEC. 764. TERMINATION OF HOME PROGRAM ASSISTANCE.

(a) IN GENERAL.—Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) is amended—

(1) in section 217(a)—

(A) in paragraph (1), by striking "reserving amounts under paragraph (2) for Indian tribes and after"; and

(B) by striking paragraph (2); and

(2) in section 288—

(A) in subsection (a), by striking ", Indian tribes,";

(B) in subsection (b), by striking ", Indian tribe,"; and

(C) in subsection (c)(4), by striking ", Indian tribe,".

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendments under subsection (a) shall be made on October 1, 1997, and shall apply with respect to amounts made available for assistance under title II of the Cranston-Gon-

zalez National Affordable Housing Act for fiscal year 1998 and fiscal years thereafter.

SEC. 765. TERMINATION OF HOUSING ASSISTANCE FOR THE HOMELESS.

(a) MCKINNEY ACT PROGRAMS.—Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended—

(1) in section 411, by striking paragraph (10);

(2) in section 412, by striking ", and for Indian tribes,";

(3) in section 413—

(A) in subsection (a)—

(i) by striking ", and to Indian tribes,"; and

(ii) by striking ", or for Indian tribes" each place it appears;

(B) in subsection (c), by striking "or Indian tribe"; and

(C) in subsection (d)(3)—

(i) by striking ", or Indian tribe" each place it appears; and

(ii) by striking ", or other Indian tribes,";

(4) in section 414(a)—

(A) by striking 'or Indian tribe" each place it appears; and

(B) by striking ", local government," each place it appears and inserting "or local government";

(5) in section 415(c)(4), by striking "Indian tribes,";

(6) in section 416(b), by striking "Indian tribe,";

(7) in section 422—

(A) in by striking "Indian tribe,"; and

(B) by striking paragraph (3);

(8) in section 441—

(A) by striking subsection (g);

(B) in subsection (h), by striking "or Indian housing authority"; and

(C) in subsection (j)(1), by striking ", Indian housing authority";

(9) in section 462—

(A) in paragraph (2), by striking ", Indian tribe,"; and

(B) by striking paragraph (4); and

(10) in section 491(e), by striking ", Indian tribes (as such term is defined in section 102(a) of the

Housing and Community Development Act of 1974),".

(b) INNOVATIVE HOMELESS DEMONSTRATION.—Section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 11301 note) is amended—

(1) in paragraph (3), by striking " 'unit of general local government', and 'Indian tribe' " and inserting "and 'unit of general local government' "; and

(2) in paragraph (4), by striking "unit of general local government (including units in rural areas), or Indian tribe" and inserting "or unit of general local government".

(c) EFFECTIVE DATE AND APPLICABILITY.—The amendments under subsections (a) and (b) shall be made on October 1, 1997, and shall apply with respect to amounts made available for assistance under title IV of the Stewart B. McKinney Homeless Assistance Act and section 2 of the HUD Demonstration Act of 1993, respectively, for fiscal year 1998 and fiscal years thereafter.

SEC. 766. SAVINGS PROVISION.

Except as provided in sections 761 and 762, this title may not be construed to affect the validity of any right, duty, or obligation of the United States or other person arising under or pursuant to any commitment or agreement lawfully entered into before October 1, 1997, under the

United States Housing Act of 1937, subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, title II of the Cranston-Gonzalez National Affordable Housing Act, title IV of the Stewart B. McKinney Homeless Assistance Act, or section 2 of the HUD Demonstration Act of 1993.

SEC. 767. EFFECTIVE DATE.

Sections 761, 762, and 766 shall take effect on the date of the enactment of this title.

Subtitle F—Loan Guarantees for Affordable Housing Activities

SEC. 771. AUTHORITY AND REQUIREMENTS.

(a) AUTHORITY.—To such extent or in such amounts as provided in appropriation Acts, the Secretary may, subject to the limitations of this subtitle and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities, for the purposes of financing affordable housing activities described in section 722.

(b) LACK OF FINANCING ELSEWHERE.—A guarantee under this subtitle may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing without the use of such guarantee and cannot com-

plete such financing consistent with the timely execution of the program plans without such guarantee.

(c) TERMS OF LOANS.—Notes or other obligations guaranteed pursuant to this subtitle shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this subtitle on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

(d) LIMITATION ON OUTSTANDING GUARANTEES.—No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the issuer's total outstanding notes or obligations guaranteed under this subtitle (excluding any amount defeased under the contract entered into under section 772(a)(1)) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to title III.

(e) PROHIBITION OF PURCHASE BY FFB.—Notes or other obligations guaranteed under this subtitle may not be purchased by the Federal Financing Bank.

(f) PROHIBITION OF GUARANTEE FEES.—No fee or charge may be imposed by the Secretary or any other Fed-

eral agency on or with respect to a guarantee made by the Secretary under this subtitle.

SEC. 772. SECURITY AND REPAYMENT.

(a) REQUIREMENTS ON ISSUER.—To assure the repayment of notes or other obligations and charges incurred under this subtitle and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this subtitle;

(2) pledge any grant for which the issuer may become eligible under this title;

(3) demonstrate that the extent of such issuance and guarantee under this title is within the financial capacity of the tribe and is not likely to impairment the ability to use of grant amounts under subtitle A, taking into consideration the requirements under section 723(a); and

(4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this title or dispositions proceeds from the sale of land or rehabilitated property.

(b) REPAYMENT FROM GRANT AMOUNTS.—Notwithstanding any other provision of this title—

(1) the Secretary may apply grants pledged pursuant to subsection (a)(2) to any repayments due the United States as a result of such guarantees; and

(2) grants allocated under this title for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this subtitle.

(c) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this subtitle. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

SEC. 773. PAYMENT OF INTEREST.

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under

this subtitle, to cove. not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriation Acts, assist the issuer of a note or other obligation guaranteed under this subtitle in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

SEC. 774. TREASURY BORROWING.

The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out the obligations of the Secretary under guarantees authorized by this subtitle. The obligations issued under this section shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the

purposes for which such securities may be issued under such chapter are extended to include the purchases of the Secretary's obligations hereunder.

SEC. 775. TRAINING AND INFORMATION.

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subtitle.

SEC. 776. LIMITATIONS ON AMOUNT OF GUARANTEES.

(a) AGGREGATE FISCAL YEAR LIMITATION.—Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this subtitle, to the extent approved or provided in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this subtitle with an aggregate principal amount of $400,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

(b) AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.—There is authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees under this subtitle, $40,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

(c) AGGREGATE OUTSTANDING LIMITATION.—The total amount of outstanding obligations guaranteed on a

cumulative basis by the Secretary pursuant to this subtitle shall not at any time exceed $2,000,000,000 or such higher amount as may be authorized to be appropriated for this subtitle for any fiscal year.

(d) FISCAL YEAR LIMITATIONS ON TRIBES.—The Secretary shall monitor the use of guarantees under this subtitle by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) has been committed, the Secretary may—

(1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of $50,000,000; or

(2) request the enactment of legislation increasing the aggregate limitation on guarantees under this subtitle.

SEC. 777. EFFECTIVE DATE.

This subtitle shall take effect upon the enactment of this title.

Subtitle G—Other Housing Assistance for Native Americans

SEC. 781. LOAN GUARANTEES FOR INDIAN HOUSING.

(a) DEFINITION OF ELIGIBLE BORROWERS TO INCLUDE INDIAN TRIBES.—Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z–13a) is amended—

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(1) in subsection (a)—

(A) by striking "and Indian housing authorities" and inserting ", Indian housing authorities, and Indian tribes,"; and

(B) by striking "or Indian housing authority" and inserting ", Indian housing authority, or Indian tribe"; and

(2) in subsection (b)(1), by striking "or Indian housing authorities" and inserting ", Indian housing authorities, or Indian tribes".

(b) NEED FOR LOAN GUARANTEE.—Section 184(a) of the Housing and Community Development Act of 1992 is amended by striking "trust land" and inserting "lands or as a result of a lack of access to private financial markets".

(c) LHP REQUIREMENT.—Section 184(b)(2) of the Housing and Community Development Act of 1992 is amended by inserting before the period at the end the following: "that is under the jurisdiction of an Indian tribe for which a local housing plan has been submitted and approved pursuant to sections 712 and 713 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas".

(d) LENDER OPTION TO OBTAIN PAYMENT UPON DEFAULT WITHOUT FORECLOSURE.—Section 184(h) of the Housing and Community Development Act of 1992 is amended—

(1) in paragraph (1)(A)—

(A) in the first sentence of clause (i), by striking "in a court of competent jurisdiction"; and

(B) by striking clause (ii) and inserting the following new clause:

"(ii) NO FORECLOSURE.—Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as deter-

mined under subsection (c)). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.";

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) LIMITATION OF MORTGAGEE AUTHORITY.—Section 184(h)(2) of the Housing and Community Development Act of 1992, as so redesignated by subsection (e)(3) of this section, is amended—

(1) in the first sentence, by striking "tribal allotted or trust land," and inserting "restricted Indian land, the mortgagee or"; and

(B) in the second sentence, by striking "Secretary" each place it appears, and inserting "mortgagee or the Secretary".

(f) LIMITATION ON OUTSTANDING AGGREGATE PRINCIPAL AMOUNT.—Section 184(i)(5)(C) of the Housing and Community Development Act of 1992 is amended by striking "1993" and all that follows through "such year" and inserting "1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount note exceeding $400,000,000 for each such fiscal year".

(g) AUTHORIZATION OF APPROPRIATIONS FOR GUARANTEE FUND.—Section 184(i)(7) of the Housing and Community Development Act of 1992 is amended by striking "such sums" and all that follows through "1994" and inserting "$30,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001".

(h) DEFINITIONS.—Section 184(k) of the Housing and Community Development Act of 1992 is amended—

(1) in paragraph (4), by inserting after "authority" the following: "or Indian tribe";

(2) in paragraph (5)—

(A) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) is authorized to engage in or assist in the development or operation of—

"(i) low-income housing for Indians; or

"(ii) housing subject to the provisions of this section; and"; and

(B) by adding at the end the following: "The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996."; and

(3) by striking paragraph (8) and inserting the following new paragraph:

"(8) The term 'tribe' or 'Indian tribe' means any Indian tribe, band, notation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975.

(i) PRINCIPAL OBLIGATION AMOUNTS.—Section 184(b)(5)(C) of the Housing and Community Development Act of 1992 is amended by striking clause (i) and inserting the following new clause:

"(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is $50,000 or less); and".

(j) AVAILABILITY OF AMOUNTS.—

(1) REQUIREMENT OF APPROPRIATIONS.—Section 184(i)(5) of the Housing and Community Development Act of 1992 is amended by striking subparagraph (A) and inserting the following new subparagraph:

"(A) REQUIREMENT OF APPROPRIATIONS.—The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent or in such amounts as are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.".

(2) COSTS.—Section 184(i)(5)(B) of the Housing and Community Development Act of 1992 is amended by adding at the end the following new sentence: "Any amounts appropriated pursuant to this subparagraph shall remain available until expended.".

(k) GNMA AUTHORITY.—The first sentence of section 306(g)(1) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1721(g)(1)) is amended by inserting before the period at the end the following: "; or guaranteed under section 184 of the Housing and Community Development Act of 1992".

SEC. 782. 50-YEAR LEASEHOLD INTEREST IN TRUST OR RESTRICTED LANDS FOR HOUSING PURPOSES.

(a) AUTHORITY TO LEASE.—Notwithstanding any other provision of law, any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian

owners, with the approval of the Secretary of the Interior, for residential purposes.

(b) TERM.—Each lease pursuant to subsection (a) shall be for a term not exceeding 50 years.

(c) OTHER CONDITIONS.—Each lease pursuant to subsection (a) and each renewal of such a lease shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior.

(d) RULE OF CONSTRUCTION.—This section may not be construed to repeal, limit, or affect any authority to lease any restricted Indian lands that—

(1) is conferred by or pursuant to any other provision of law; or

(2) provides for leases for any period exceeding 50 years.

SEC. 783. TRAINING AND TECHNICAL ASSISTANCE.

There is authorized to be appropriated for assistance for the a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities $2,000,000, for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

SEC. 784. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect upon the enactment of this title.

The CHAIRMAN. I'D LIKE TO TURN TO THE DISTINGUISHED VICE CHAIRMAN, SENATOR INOUYE, AND ASK IF HE HAS ANY COMMENTS?

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, SENATE COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Thank you very much, Mr. Chairman. And I join you in welcoming our Secretary.

While there are many critical needs in Indian country, we meet today to consider one of the most severe, the housing needs of Indian and Alaska Native families.

Yesterday, I had a business meeting of the Indian Affairs Committee. Chairman McCain observed that some issues are of such importance that they transcend political differences. And I believe that this is one such issue.

Too often, Indian communities are plagued by the extreme shortage of adequate, affordable safe housing. In certain communities, overcrowding and facility deficiencies afflict more than 60 percent of the housing on Indian lands.

And no family in America should be forced to live under these conditions.

The measure before us, by establishing a block grant, seeks to provide some relief by affording tribal governments greater flexibility in addressing the needs of their community through deregulation and administration simplification.

The block grant would be administered by the tribe or its privately designated housing entity. It also seeks to authorize a loan guarantee program and allow for long-term leasehold interests in trust lands.

This measure fundamentally changes the provision of housing assistance to Indians by severing a 35-year tie to public housing, a tie that has often served to bind Indian housing authorities to rules and regulations established by urban public housing, which are not well-suited nor readily adaptable to remote and rural Indian reservation communities.

While there may be many similarities in housing needs of low income families, there are also differences between the needs of Indian and non-Indian families.

Indian families often have no other alternative to housing, other than HUD, because, for the most part, private sector housing development does not exist on most reservations.

Fifty-five percent of the entire housing stock in Indian country has been built through HUD. In recent years, HUD homes have accounted for 80 to 85 percent of all newly constructed homes on reservations.

Thus, we must keep in mind that what we do here, through this measure, will have a far-reaching and lasting effect on Indian family life.

And I'm pleased to note that from all observations, this measure has received strong support in Indian country.

It is my understanding that this measure was developed in consultation with the National American Indian Housing Council, and I commend their contributions and the leadership of Congressman Lazio in the development of this proposal.

However, I would also note that concern has been expressed by tribes and Indian housing authorities as to some of the provisions of the House passed bill, and that the administration has raised a number of important issues.

And so I look forward to working with my colleagues to address these concerns and to address other matters which may weigh heavily on the minds of those seeking to ensure the protection of low income housing and rental assistance programs.

Mr. Chairman, I would be remiss if I were to fail to point out that while this measure is entitled "The Native American Housing Assistance and Self-Determination Act," it does not attempt to address the housing needs of the native population of the State of Hawaii.

Three recent studies document the fact that native Hawaiians have the highest incidence of housing needs, not only in the State of Hawaii but in the Nation, exceeding even that of American Indians and Alaska Natives residing on reservations.

At a recent housing forum, tribe after tribe, described the magnitude of their waiting lists for homes. My colleagues may be interested to know that in Hawaii our waiting list, not for all native Hawaiians but just for those who qualify to reside on homelands set aside for their benefit under Federal law, is over 13,000 applicants, representing over 30,000 family members.

Mr. Chairman, I do not mean to suggest that title VII of the measure we consider today should be a vehicle by which we seek to address the housing needs of native Hawaiians. I just take this time this morning merely to raise the issue so that we might reflect on the need for future legislative remedy, a remedy to a policy that precludes native Hawaiians residing on their home lands from accessing Federal housing programs available to every other citizen of the United States.

And I certainly intend to continue my efforts to find some meaningful addition or solution to the lack of access that native Hawaiians have to Federal housing programs.

Mr. Chairman, I am pleased to advise my colleagues that the Secretary, Mr. Cisneros, and I will be meeting on this matter shortly.

That being said, I wish to offer my support for this measure and pledge to work with my colleagues to advance this in an expeditious and non-partisan manner.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Inouye.

Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

I welcome the Secretary and look forward to hearing the rest of the panel. And with your leave, Mr. Chairman, I'd like to say a couple of personal comments about Brian Wallace of my own State when the second panel is convened.

The CHAIRMAN. Thank you.

Welcome, Mr. Secretary. Please proceed with your statement any way you deem to be fit. Your complete statement will be made part of the record.

STATEMENT OF HENRY CISNEROS, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, DC, ACCOMPANIED BY, DOMINIC NESSI, DIRECTOR, OFFICE OF NATIVE AMERICAN PROGRAMS

Secretary CISNEROS. Thank you very much, Mr. Chairman.

Let me begin by thanking you, as chairman. I think I have said this to you before, personally, that your leadership on Native American issues is noted around the country. Whenever I speak to Native American leaders, they frequently cite your name personally as a person that they respect for what you have done. Far outside of your State boundaries, your name is associated with leadership of Native American issues and Native American housing.

The CHAIRMAN. Thank you, Mr. Secretary.

Secretary CISNEROS. I've had the opportunity to visit several reservations in Arizona recently in the last several months, visited the Navajo headquarters at Window Rock, and the Pascua Yaqui Reservation, so I know something of why you have this special interest, but your national interest is noted.

Senator Bryan, thank you, sir, for your work in this area as well.

HUD has been very active over the last several years.

This is a special commitment that we have made. As has been noted, much of the Native American housing in the country is HUD-sponsored.

We have focused on opening homeownership in Native American communities, the reduction of regulations and increasing local flexibility, working with the tribal leadership as well as the local housing authorities.

Frequently the housing authorities are the biggest employer on the reservation, and the tribal leadership is the focal point for our community development programs, so we have strong and intimate working relationships with both.

We've spent a good deal of time over the last several years, listening both formally and informally, formally through consultation processes to hear what the leaders are saying, and we've tried to reflect what they say in the changes in our regulations and rules.

As well as informally, I have visited about 10 reservations on my watch.

My colleague, Dom Nessi, who is the head of our Indian program, and one of the acknowledged experts in the country on Native Americans housing has visited over 150 Native American communities.

We've tried to focus on the cultural relevance of design, on the Section 184 Guaranty Program, which is doing very well now.

And I must say, Mr. Chairman, that your concerns expressed about the conditions in Native American communities are underscored by a recent study that we did that shows that Native American have an 8-to-1 greater incidence of living in substandard or overcrowded conditions, 8-to-1 greater than any other group, than the next group in American society. So the conditions are very, very tough.

I would like, also, Mr. Chairman, to acknowledge Jackie Johnson, the president of the Native American Housing Council, who will participate later, but she deserves congratulations, just having been re-elected yesterday as chairperson of the National American

Indian Housing Council. She's a unique leader and we have great respect for her.

As you know, the current Indian housing program was created as a result of a legal opinion in 1961 which allowed Native American nations to participate in the already existing public housing program.

One year later, another program, Mutual Help Homeownership program, was created.

While these actions were thought of as solutions to assist Native Americans to address housing conditions, the fact is that they put in motion a program which was designed for urban areas. And for 35 years, Native Americans have had to cope with a program that was designed for someone else.

This measure and your work move us toward a Native American housing program which Native Americans can call truly their own. This is pioneering legislation.

In 1988, the only separate piece of Indian legislation ever passed was completed, and it simply authorized administrative decisions made 27 years earlier.

So despite these institutional barriers, the men and women of the Indian housing industry have worked to construct almost 100,000 housing units and provide a resource which has been a prime factor in housing in the Native American communities.

It's time that Indian country receive a program that it can call its own. A program should be based on the needs and conditions found in the reservations, not in the big cities, and it should respect the right of each individual tribe to make its own decisions, and to set an individual course that would befit its own traditions and conditions.

The Department firmly supports the concepts and direction of this legislation. And I want to assure you that we will commit the full resources of the Department to ensure that, if enacted, it will be implemented quickly without undue bureaucracy, efficiently and in a manner consistent with the objectives that the committee and the Congress desire.

There are just a few issues that I'd like to raise with you today.

The first relates to the protections afforded by the so-called Brooke amendment, which are not presently in the proposed legislation.

The Native American community has long desired the ability to lower rents for its elders, the disabled and special groups. We support that desire.

However, we believe that the elimination of the Brooke amendment entirely will assist some families in lowering rents, but place a potentially greater rental burden on others.

We recommend that the Brooke amendment be retained particularly as it relates to persons under 30 percent of income, a fixed level of income.

It's our feeling that we need to provide protections for low income persons and allow tribes sufficient flexibility.

One way to do that would be to say the Brooke amendment should be retained on a particular income group. In other words, the protection is provided to a particular income group, rents can go higher for other groups but should not be able to go higher for

this group. Lower perhaps, if desirable, but not higher on that particular group.

Frankly, even though the housing authorities are under stress, and this goes for big city housing authorities as much as it does for housing authorities on Indian reservations, raising rents on the poorest people ought not be a way to raise money. They simply can't pay.

And as you know, Senator, having been to the reservations, you know that there are many people who just don't have the money to pay.

So restricting it to people at 50 percent of median income as a coverage, providing some flexibility above, might be an option, but simply removing Brooke across the board or all the way down to 30 percent of median goes too far.

A second area where we suggest changes relates to the comprehensive planning requirements. While we firmly support the need for better planning in Indian housing, the bill, as presently written, will place a large and unnecessary administrative burden requirement on Native American communities.

It's our belief that the plan requirement should be significantly reduced and developed in a manner that will promote reliable performance measurement and effective federal oversight, but will reduce paperwork requirements which many small Native American communities will find burdensome.

The Department agrees with the provision permitting us to continue to serve those few State-recognized tribes currently operating Indian housing authorities. However, we would ask that the conferees clarify in report language, that while we do not oppose the inclusions of those tribes, the sole purpose of doing so is to help them to maintain their operation, not to accord any additional justification for broader federal recognition of those tribes.

We would also recommend that the conferees clarify that only those State-recognized tribes with Indian housing authorities currently under an annual contributions contract are eligible for this program without allowing new State-recognized tribes to participate.

A third area, Senator, refers to the point that you made about Davis-Bacon. I simply want to say that we do listen to the tribes and know their concerns.

The administration position on Davis-Bacon administration-wide is that we oppose repeal of Davis-Bacon, and therefore oppose piecemeal repeal as well.

I know this doesn't satisfy your concerns or, for that matter, some of the Native Americans communities' concerns but it is Administration position that we don't favor a disjointed repeal of Davis-Bacon.

The administration believes that the provision excepting volunteers from Davis-Bacon prevailing wages should be revised to ensure that we find that these are bona fide volunteers and not a device for circumventing the principles of the Fair Labor Standards Act.

And I'll be happy to answer questions about that further.

There are a number of additional provisions which we support. I will simply indicate those for the record and not take time with them now.

For example, we support the provision which clarifies that tribal members be provided an admissions preference for the housing developed by their tribe. That would be an important addition.

Attached to this testimony are other comments of a more technical nature. This Department and Treasury Department may be providing additional technical changes relating to the section 771 guarantee fees, aggregate outstanding loan limitations, and others.

Again, let me close and take your questions, by thanking you, Mr. Chairman, for your strong leadership, Senator Bryan, other members of the committee who have distinguished themselves as advocates for Native American housing.

Before I conclude my remarks, let me mention one other matter, an issue that is one of importance.

Today Indian housing is funded from a number of categorical grants, many of which tribes share with the Public Housing program. We respectfully request that both the Authorization and Appropriations Committees carefully consider the transition to the new Indian Housing Grant Program to ensure that sufficient funding levels are established and maintained.

We've worked hard even within shrinking dollars to increase the amount of money targeted at HUD to Native American communities.

Even when the CDBG program, Community Development Block Grant program has been under stress, we've increased by 50 percent our targeting to Native American communities.

Similarly under the HOME program.

I just want to assure you, Mr. Chairman, Senator, we care deeply about those Americans who are living in the worst circumstances of any group of Americans, Native Americans, as I have personally witnessed.

And we care deeply that the promises made in treaty after treaty, commitment after commitment by this Nation, be fulfilled in our time to the Native American community. We can make a real difference here, a real start.

The evidence is clear that there are good housing authorities, good tribal leadership ready to make a difference. We need not drift on as unfortunately we have for generations. We can make a difference bipartisanly here.

Your leadership and the leadership of this Committee is proof that we can do this.

Thank you very much.

[Prepared statement of Secretary Cisneros appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Secretary. As always, you give very impressive testimony and your record of commitment to Native American housing and Native American issues is very clear and extremely laudable. I'm very appreciative not only of your commitment here in Washington, but your willingness to go out into Indian country and view, firsthand, the conditions that exist and the compelling needs that are there.

I also want to express my strong support for this legislation, and I believe that it can be a major step forward in allowing us to solve

what has turned into a bureaucratic maze sometimes so complex and difficult that Indian tribes basically just don't even attempt to get housing because of the difficulties that are entailed.

And of course, as you know, there is this severe kind of problem, care and maintenance of Indian housing that you've also encountered and tried to grapple with in the inner cities as well.

And again, I want to thank you for your special concern for Native Americans. I think it's a very important, incredibly laudable virtue, especially since you have a number of other constituents who are also in need across America.

Mr. Secretary, I have based, as has Senator Inouye, our treatment of Native Americans on the fundamental basis of a government-to-government relationship to respect tribal sovereignties, as you've stated in your remarks.

What that translates into is, as much as possible, allowing the elected tribal leaders to make the decisions which they think are best for their tribes.

I've been working on legislation which basically turns the Bureau of Indian Affairs, the most inefficient branch of government today, into basically an organization that provides technical assistance.

There have been over 1,000 studies and boards and commissions that have been convened over the last 100 years, and all of them have made recommendations, none of which have been implemented, which dampens my optimism to some degree.

But I believe we are also blessed in this Nation with a generation of tribal leaders, some of whom will testify after you, who are articulate, intelligent, caring, and indeed, have a vision for the future of their people that may not have been as pronounced in the past.

Certainly these leaders bring enlightened and informed views to the debate and discussion concerning Native American issues today.

Now, Mr. Secretary, if we share that view, that decisions should be made as much as possible by the Indian tribes themselves, then, with all due respect, that contradicts directly your testimony concerning Davis-Bacon and Brooke.

Again, I want to emphasize our relationship with Native Americans is unique. Our policy is that we treat them on a government-to-government basis. If you do that, then you respect the wishes and the policies of those governments as long as they are within the laws of the United States of America.

Now one of the witnesses that will follow you, Joyce Dugan, who is Principal Chief of the Eastern Band of Cherokee Indians, will say,

I understand the political realities regarding the imposition of Davis-Bacon wage rates.

She understands the political realities.

However, I want to be sure that you understand the real world reality of its application in Indian country.

One housing authority has informed me that the Davis-Bacon requirement currently adds $15,000 to the cost of a typical new home. It means that a $50,000 home costs $65,000 to build.

The Davis-Bacon cost requirements are simply not applicable to the private market wages in our area.

This additional cost has two negative impacts. It of course adds a substantial cost to the tribal member who is purchasing or renting the home. Second, it diminishes

the efficiency of our tribal housing development. This inefficiency will be especially evident under the block grant scenario.

As a gentlemen from the All Pueblo Council noted earlier this week, we are being forced to pay Cadillac prices for Volkswagens.

I want to emphasize one thing again. The argument that you give for not having a repeal of Davis-Bacon, that this would conflict with an administration-wide policy, flies directly in the face of the concept of respect for tribal sovereignty. These are not different constituencies, they are tribal governments and sovereign nations. And if they say that they think Davis-Bacon is not appropriate for them, I think that should be respected.

Now if they believe that Davis-Bacon is appropriate, then I think that should be respected.

And the same thing with the Brooke amendment. I have to tell you, support for the Administration for both Davis-Bacon and Brooke in Indian country is paternalism. It's paternalism that we've been trying to fight against for all of these years.

Now I can tell you that the witnesses behind you will tell you that. I appreciate the fact that you've gone out and visited these Indian tribes, but I know what they've told you.

They've told you that they want to make their decisions themselves, because they know what's best for the tribal members.

And in all due respect to you and every other bureaucrat in Washington, DC, you don't know their problems as well as they do, and cannot meet their challenges as well they can.

So I intend, Mr. Secretary, with all due respect, to fight this administration policy that will not allow the Indian tribes to exercise tribal sovereignty because everything that I and Senator Inouye have done for the last 10 years, while he and I have been chairman and vice chairman respectively, of the Indian Affairs Committee, and the 4 years before that, is to fight for tribal sovereignty, and their ability to make their own decisions.

So again, with great respect and appreciation for the efforts that you have made, we have an honest disagreement here. I respect your position, but I would allege that the majority of Indian country, whom I'm obligated to serve, takes my position on this issue as opposed to yours.

Please respond. And again, I hope my remarks are taken as they are intended with respect for your views and profound and deep appreciation for your efforts on the part of Native America.

Secretary CISNEROS. Thank you very much, Senator.

Let me say, first of all, that I do take them in the spirit of an honest policy disagreement.

Our work has I hope reflected a respect for the views of the tribes on many, many, many, fronts.

This is an issue where there is an administration policy, and it clearly is not my role, as an individual Cabinet officer, to go in the face of an administration decision, an administration position, which has a long history and merit behind it.

And the essential argument is that craftsmen are due recompense for their training and preparation and the work that they put into the quality and construction that they do. And while that argument may not be as applicable in some areas of the country, and does get crossed with issues of sovereignty, it is an administration-wide position.

I would simply say that both on this and Brooke, we do feel that the appropriate thing is to think in terms of national policy.

Let me say a quick word about Brooke, if I may.

The Brooke amendment removal is argued to housing authorities on the grounds that it would allow housing authorities to secure some revenues by raising rents at some higher levels, or perhaps lowering rents at other levels.

But the problem is that it's not operating in a benign environment. That is to say, the dominant dynamic in the housing environment today is the shortcut in funds.

HUD's budget has gone from $25 billion to $20 billion. A lot of that came out of public housing. As that occurred, housing authorities feel tremendous pressure and strain to try to just make ends meet.

So the dynamic at work is in favor of coming up with money from someplace. All we're saying is that the poorest people ought not be subjected to rent increases.

If you want to remove Brooke at higher levels, that's one thing, maybe 50 percent of median income and above. But removing protections on the poorest of people we think is just not good policy.

And let me just say, Congress enacted, earlier this year, a new $25 minimum rent for people in public housing. The Congress was acting clearly in good faith to do it, but the result was going to be that people were going to be evicted.

So I stepped in and urged housing authorities to set up reserve funds and otherwise find ways to mitigate the effect of a $25 increase.

Members of Congress later thanked me for doing that because it was not their view that people should be evicted. They simply had no way to know that something as little as $25 a month was going to result in thousands of evictions across the country.

And the housing authorities, in many instances, would have evicted the people because they were following the law, number one, but two, it would allow them to bring somebody in that could pay more.

All I'm saying is, in an environment where money is so scarce and the dynamic of having to make ends meet is so pervasive, taking the protections off of the poorest to me is the wrong time to do it.

And so that's my argument on Brooke.

And I understand the sovereignty points. I respect them. This is just national policy at this point.

The CHAIRMAN. I thank you, Mr. Secretary.

And let me just say, with some fear of being redundant, that tribal leaders will say, look, we're elected and we're elected by our tribes in a free and open and democratic process. If we start throwing people out of our public housing, because we're charging them too high rent, we're going to be thrown out of office. Let the tribe decide whether our policies are right or wrong in the democratic process.

I have sympathy for their view that it's much easier to throw out a tribal council, an elected tribal chairman or president, than it is to remove a bureaucrat in Washington who is issuing the policies, but whose name or face they do not recognize.

So that's the difference of opinion here, but I also understand your position. I think you articulate it very well.

Secretary CISNEROS. Senator, if I may say, it may be difficult to throw out a bureaucrat in Washington, but the Congress can change the law, and that's what this debate is about. You have the ability to change both Brooke and Davis-Bacon.

We have stated our position for the record, but that doesn't stop the Congress from doing what it needs to do here.

The CHAIRMAN. I understand that. And I also understand that the Executive Branch has a thing called a presidential veto, which requires two-thirds to override.

But, look, I think we've exhausted both these issues and I thank you and respect your views.

Mr. Nessi, did you have anything you wanted to add to that?

Mr. NESSI. No, sir.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much.

I've enjoyed the colloquy, Mr. Chairman, between you and the Secretary on the question of sovereignty.

Mr. Secretary, I don't serve on the Foreign Relations Committee, and don't consider myself an authority on the subject, but my recollection is that when we provide foreign assistance to other countries that sometimes is a matter of overriding American policy, we do attach certain conditions and restrictions to those foreign assistance provisions.

Perhaps, if you happen to know, you can enlighten me as to whether that's the case or not?

Secretary CISNEROS. Senator, as you know, there frequently are restrictions on American assistance, because in the final analysis, the dollars are American taxpayers' dollars taken from the polity, the American public as a whole, and they have certain intentions in those moneys.

Moneys for public housing are directed, for example, by law to the poorest of Americans. It is our hope that they would be used that way.

Heretofore they have had targets to assure that that is the case. So to attach conditions to money that's publicly raised for particular purposes to be used by whatever entity, sovereign or otherwise, State or national government or in this case, a sovereign nation within the United States, has precedent in other forms of assistance.

Senator BRYAN. I thank the Secretary.

The CHAIRMAN. Let me also point out, Mr. Secretary, that there is a difference between foreign aid to sovereign nations and aid to the Indian tribes. There's no nation that I know of outside the United States, with whom we've made treaties, that we promised we would provide them, in return for the lands in the rest of our country, we would provide housing and health care and education. The words of those treaties, none of which I know we made with any other nations, say, as long as the rivers flow and the sun rises and sets, and et cetera.

So I think the Native Americans here will argue that it's not a matter of charity or national interest but a matter of solemn treaty

obligations which should be honored because of the fundamental way our country does business.

So when I say we conduct our relations on a sovereign to sovereign basis, we do that because of solemn treaties that we consummated with them, all of which detail the obligations we have to them.

Secretary CISNEROS. Yes, sir.

The CHAIRMAN. So I don't believe it's a matter of us supplying aid to Rwanda because it's in our national interest to do so. It's a matter of a solemn treaty we made with these Indian tribes.

But I certainly understand Senator Bryan's point and yours, that unfettered aid without any provisions is obviously something that we would not necessarily want to pursue because we have an obligation to those who provide the money as well.

This is the careful balance in this debate that we've been going through for long periods of time, and again this kind of debate needs to be ventilated and I appreciate and understand your views.

Anything else, Senator Bryan.

Senator BRYAN. No.

The CHAIRMAN. Thank you again, Mr. Secretary. It's always a pleasure to have you with us, and I look forward to your coming back to Arizona soon and spending as much money as possible.

Thank you very much. [Laughter.]

Secretary CISNEROS. Senator, let me make clear how much respect I have, and I say this both in a public capacity but also in a personal capacity. Your leadership has been rare and extraordinary and it's touched a lot of people's lives across the country in Native American communities.

Thank you.

The CHAIRMAN. Thank you.

Our next panel is Brian Wallace, chairman of the Washoe Tribe of Nevada, Gardnerville, NV. Joyce Dugan, principal chief, Eastern Band of Cherokee Indians. Roland E. Johnson, Governor, Pueblo of Laguna, member of the All Indian Pueblo Council, Inc., Albuquerque, NM.

Senator BRYAN. Mr. Chairman, would you?

The CHAIRMAN. Yes; I understand you'd like to say a few words about a truly outstanding American, Mr. Wallace.

STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA

Senator BRYAN. And I thank you very much, Mr. Chairman and I will be brief so that the other panelists will have an opportunity, as well as those that follow in panel number three.

Mr. Chairman, I'd like to say it's a particular pleasure for us in Nevada to have Brian Wallace as one of the witnesses. He is a distinguished Nevadan, has served as a member of the tribal council since 1978. He is currently the vice chairman of the Inter-Tribal Council of Nevada. He's a member of the State Indian Commission, member of the board of directors of Western Nevada Development District Board, the Lake Tahoe Regional Arts Commission, and other honors.

I've had occasion to work with him not only as a member of the Senate, but as Governor. I must say, I've read his testimony. He

provides an insight, Mr. Chairman, into the problems that smaller tribes have with respect to the allocation process.

And I think, as he will tell you in his own words, the Washoe Tribe is a small tribe consisting of about 1,600 members, as I recall, so I'm delighted that you have selected to have him appear as one of the panelists to enlighten us as to his perspective on this important legislation before us.

The CHAIRMAN. Senator Bryan, I want to thank you for your introduction.

Mr. Wallace, I'd also like to thank you for your continued involvement and commitment on Native American issues both in Nevada and around the country, and, Senator Bryan, the relationship that you have with Mr. Wallace is indicative of that, and I appreciate your introducing him and illuminating the record.

Senator Faircloth would like to say a few words about Joyce Dugan.

STATEMENT OF HON. LAUCH FAIRCLOTH, U.S. SENATOR FROM NORTH CAROLINA

Senator FAIRCLOTH. Thank you, Mr. Chairman.

And I would like to say something about Joyce Dugan. All I have to say is good. The main purpose of being here today is to welcome Joyce, a fellow North Carolinian and the Eastern Band of Cherokee Indians.

It's kind of hard to think of them as the Eastern Band because they're in far western North Carolina, Joyce, but that's the tribe.

Joyce has been a leader among the Cherokees and not only a leader among the Cherokees but a leader among all western North Carolina. She's done a lot of economic development for not only the tribe but for the entire State.

And I am pleased that the committee's going to be hearing her views on Indian housing matters because she's spent a lot of time and has a lot of thoughts and wisdom on the subject.

I want to ensure that what the House has passed will improve the state of Indian housing and help the smaller tribes as well.

Joyce, I'm delighted to see you. Thank you for being here.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Faircloth, and welcome Joyce.

I guess, Mr. Johnson, I have to introduce you. There's no one here else to do so, except maybe I'd point out that New Mexico and Arizona were once New Mexico territory and we would be members of the same State if that had not been broken up.

So I welcome you, and I have had the opportunity, as you know, to visit you in New Mexico, and you come from a very, very lovely place, and your leadership has been very important in New Mexico and throughout the country.

And so we'll begin with Chairman Wallace. Welcome, and all three of your complete statements will be made part of the record. Please obviously make them brief, but don't hesitate to include all the information that you think is important for the members of the committee to hear.

Chairman Wallace.

STATEMENT OF A. BRIAN WALLACE, CHAIRMAN, WASHOE TRIBE OF NEVADA, GARDNERVILLE, NV

Mr. WALLACE. Thank you, Mr. Chairman.

It's certainly my privilege and honor to be here today, and I'd like to thank Senator Bryan for being such a good friend. Speaking as a man, he's our kind of Senator.

It's a privilege to be here.

When I was growing up, I started with our housing authority and it's kind of a privilege finally to be able to speak on behalf of that issue finally.

I just wanted to make basically five fundamental points with regards to title VII and the legislation, but I think, and I don't need to say this, you intimate it, that this legislation doesn't need to acknowledge the obligation of this country to American Indian people, it must respect it.

So in its highest form, it should intimate the Government, the Government relationship with tribes.

But I want to speak more closely to the protection of small tribes' interest. The number one concern for the Washoe Tribe, as well as many other small tribes located in the States of Nevada and California is protection of small tribes in the allocation formula.

Lack of any available housing can put the continued viability of small tribes in jeopardy. There's little or no existing housing on the reservations. It's difficult for a tribe to maintain a vibrant tribal community.

And quite frankly, if we had better means ourselves, we would rather finance our own housing, but right now, where I live, HUD housing and HIB, and I know you've taken some strong leadership in that area as well, was the only means available for us to house our families.

And speaking personally, I can't think of anything more real and fundamental to making a person feel accomplishment than to be able to provide a home for their family, which doesn't only just house themselves, but I know extended families and grandchildren and aunts and uncles, it's a very important thing to us.

I'm kind of always nicely reminded of our need by people, members, and you've helped us change this. There was a gentleman, and I'm not here to embarrass myself by saying this, that had to sleep with his animals in the winter just to survive.

And with your help and Senator Reid, Chairman Inouye at the time, that man doesn't have to do that anymore.

And there's people that actually sleep in their cars in front of my house. And it isn't out of disrespect for what I'm supposed to do, but it's actually a gracious reminder of my obligation to them, that we have more important things to do.

So the allocation formula set forth in this 742 is, in our mind, pretty ambiguous and open-ended. We understand that the drafters of the legislation at HUD intended to fund block grants to these three formulas, concentrating on operations, modernization and new development, and that the operations and modernization formulas being used should be continued to be used.

Therefore a new formula should be established only for new development funding.

We would like to see this formula broken down expressly in Section 742 because the formula factors would only apply to new housing development and not operation or modernization. There would be no longer any reason to include the current housing stock as a factor.

The other thing that I think is really important to us is tribes, this whole issue of the protection of governmental services and a reasonable appeals process as its discussed in the bill.

Which in our review of it, amounts to almost a waiver of sovereign immunity with regards to appeals processes that are discussed here, and actually would require us to take these questions to a Federal court because I think it's kind of an exhaustive and wasteful use of time and energy.

If we could use the appeals processes and administrative relief measures that are already established under the Self Determination Act, and apply these in this context in this process, I think that would be much more beneficial to Indians and Americans in general, in terms of using better time and energy in what we do.

So if we could suggest that that's taken into consideration, there's no sense in having to reinvent the wheel with regards to what's talked about in this piece of legislation.

With regards to section 782, which proposes 50-year leasehold interest in trust lands be permitted, I really struggled to try to figure out the good news, bad news about this whole thing.

I certainly understand the needs of the secondary lending marketplace and their requirements for certainty.

But I guess this would contemplate some changes in existing Federal policy and particularly on regulation with regards to dealings on leasehold interests provided by tribes.

And if this issue too, if this is going to be argued, we would hope that direction would be to have these discussions occur in tribal court in those forums. We think this is really important if we're going to show respect to tribal sovereignty that we do it that way too.

Creation of viable mixed income communities on reservations I think is very good. So generally I'll wrap it up. You know, there's a lot of detail in the testimony I think, you know, it thoroughly discusses what we really wanted to say and I was just trying to do my best to highlight this. So thank you.

[Prepared statement of Mr. Wallace appears in appendix.]

The CHAIRMAN. Thank you, Mr. Wallace.

And let me say, I read your testimony last night, and I appreciate the detail involved in it, and there are some very important recommendations which I'll certainly try to address in this process here. Thank you.

Mr. WALLACE. Thank you. I fancied myself as an Indian child welfare expert and this is kind of new, this housing stuff, to me. I did my best.

The CHAIRMAN. Thank you very much.

Ms. Dugan, welcome.

STATEMENT OF JOYCE DUGAN, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS, CHEROKEE, NC

Ms. DUGAN. Thank you.

I know I have 5 minutes, but I would hope that you remember I'm from the south and sometimes we don't speak as quickly as you may wish us to.

The CHAIRMAN. I've detected that trait with Senator Faircloth. [Laughter.]

Ms. DUGAN. I hoped he would stay here.

I would like to say good morning to you, Chairman McCain, Senator Bryan. I was especially pleased to see Senator Faircloth here.

I would like to thank you for taking the time to hold a hearing on this issue of reservation housing that is of importance to all Indian tribes.

I'm especially thankful to you, Senator McCain, for your on-going interests in the subject.

I'm pleased to have an opportunity to present the views of the Eastern Band of Cherokee Indians and our housing authority, which is the Qualla Housing Authority.

I am the principal chief of the Eastern Band of Cherokee Indians, and I have with me today, Sheila Ellingberg, who is one our staff for the housing authority, and Tim Seward, an attorney with George Waters' firm who represents our tribe here in DC.

The Eastern Band of Cherokees' land is located on what is called the Qualla Boundary in Western North Carolina, made up of about 56,000 acres. Our housing authority currently operates 1,007 rental units and homes and a HUD voucher program with 80 units.

The CHAIRMAN. How many people are members of your tribe, Ms. Dugan?

Ms. DUGAN. 11,000.

Although the tribe is having some success operating our housing authority, we still have a terrible unmet housing need on our reservation, as do all other reservations I'm sure.

Currently, we have 804 families on the waiting list for homes. These are families who meet all the poverty requirements.

Qualla Housing has worked for 20 long years to establish a successful housing authority on the reservation.

I can remember before that 20-year period, when many of our people did not have homes and lived in shacks with tar paper put on the walls. I am a product of a home such as that.

I'm also personally proud that we were able to get the HUD program on our reservation. As you may or may not know, our deeds to our land are held in trust by the Government so we've never been able to use our land for collateral to obtain loans.

I was one of the early fortunate ones, as a college student, who was able to obtain a house through the HUD program, so I am personally attuned to it.

Title VII accomplishes many of the goals which we have long sought, especially the separation of Indian housing from other public housing, and it focuses the Indian housing program on the government to government relationship, finally where it ought to be.

To the extent that the legislation will provide tribes and housing authorities with greater flexibility and less Federal redtape, it is certainly worthwhile. However, there are certain concerns with the bill which we wish to bring to your attention.

As I mentioned above, one of the cornerstones of title VII is its clear intent to base the Indian housing program on the govern-

ment-to-government relationship that exists between the United States and federally-recognized tribes.

However, the definition of the term "Indian tribe" in title VII includes certain State-recognized Indian tribes which do not enjoy this government-to-government relationship with the Federal Government.

This inclusion of non-federally recognized tribes in the definition is no matter of mere semantics. Federally recognized tribes are recognized by the United States as governing entities. The sovereign status of our tribes is inherent but is affirmed by the Indian Commerce Clause of the U.S. Constitution, numerous treaties signed between tribes and the United States, many Supreme Court cases and numerous congressional acts.

We recommend that the definition of Indian tribe needs to be corrected by striking subpart (b) so that it applies only to federally recognized tribes.

The Cherokees have a particular concern about this because in our nearby neighboring State of Georgia, the State itself is recognizing Cherokee Tribes in that area, and we have hired a lobbiest to fight this effort.

I understand that one or more of these groups are selling Indian cards and making a mockery of Indian status.

Pursuant to recent discussions with the regional HUD office, our understanding of the history of this loophole that exists in the law that allowed certain State tribes to be given Indian housing authorities is that upon a showing that the communities they serve do not receive any Federal assistance through other State housing authorities, these housing authorities by State tribes somehow began to receive Indian housing funds. Because they do not have a federally recognized tribal government, we feel their housing needs are the responsibility of the State government.

The second concern we have has to do with, not concern so much as we'd like to point it out as an issue of importance, and that is trust responsibility language.

As part of the effort to refocus the Indian housing program on the relationship that tribes have with the federal government, the Native American Housing Assistance and Self-Determination Act of 1996 refers to the trust responsibility owed by the United States.

This is extremely important and positive because it sets the foundation for the Indian housing program and distinguishes it from welfare assistance.

Pursuant to treaties signed, Indian tribes agreed to peacefully turn over their homes and homelands in return for the United States commitment to provide, among other things, safe homes on the remaining reservations.

The current housing situation on Indian reservations, where substandard and overcrowded housing conditions are prevalent, demonstrates the sad failure of the U.S. Government to uphold its end of the bargain.

The third issue, and I will try to hurry, is freedom from excessive federal regulation.

I wish to go on record that we are not in favor of the Davis-Bacon Act being applied to Indian housing. I think Senator McCain referenced my statement earlier, so I will not repeat it. We feel that

it is too burdensome, and it will also affect the cost and the number of houses we can provide.

Regarding the 5-year plans, we feel again that this is not reducing the Government redtape, nor is it reducing the bureaucratic flexibility. In fact, it will cause our housing authority to be more inefficient, and it will also be costly.

And we are particularly concerned that small tribes will not have the ability to do these comprehensive housing plans.

If funding is not tied to the 5-year housing plan, then why are we required to do a 5-year plan?

We also propose that the allocation formula be examined carefully and that the formula be developed with the negotiated rulemaking procedure.

The factors in the formula need to be more concretely defined.

For example, the formula refers to economic distress. I see it being very difficult to define economic distress because we all see that in different terms.

In closing, I wish to again thank you for the opportunity to appear before you today. The Eastern Band of Cherokee Indians fully endorses title VII and the intent of it.

I ask for your consideration of the issues that I've addressed.

Thank you.

[Prepared statement of Ms. Dugan appears in appendix.)

The CHAIRMAN. Thank you very much, Ms. Dugan.

Chairman Johnson.

STATEMENT OF ROLAND E. JOHNSON, GOVERNOR, PUEBLO OF LAGUNA, MEMBER, ALL INDIAN PUEBLO COUNCIL, INC., ALBUQUERQUE, NM

Mr. JOHNSON. Thank you very much, Mr. Chairman.

I'm Roland Johnson, and I serve as the Governor of the Pueblo of Laguna.

This morning I also have the privilege and the honor of representing the All Indian Pueblo Council.

With me are a couple of individuals, and I'd like to introduce them.

Michael Sisneros, who is the executive director of the All Indian Pueblo Council Housing Authority.

And Richard Ong, who is the executive director of the Pueblo of Laguna Housing Authority.

Also in the hearing room are several members from the Pueblo of Laguna, as well.

Richard Smith, who is a tribal staff officer, and Norbert Waconda and Ralph Carr, both of whom are commissioners of our local housing authority.

The CHAIRMAN. Welcome to all of them to the hearing.

Mr. JOHNSON. Thank you very much, Mr. Chairman.

Mr. Chairman, at a recent meeting of the All Indian Pueblo Council, the All Indian Pueblo Council did hear the comments and the recommendations and concerns as developed by the Southwest Indian Housing Authority Association as regards proposed legislation.

And by passage of a resolution, the All Indian Pueblo Council did adopt the recommendations and the concerns of this particular organization.

Specifically, the All Indian Pueblo Council supports the concept of block grants directly to the tribes. Among some of the concerns that were expressed in our meeting included one, that the negotiated rulemaking should apply to the entirety of title VII.

Two, that the requirements for local housing plans should be made regulatory and not statutory. The requirements additionally should be simplified and not onerous to Indian tribes or their tribally designated entities.

The act should not disadvantage small tribes, and that any funding they receive should be sufficient to allow them to continue to operate as housing entities.

The act should not subject Indian tribes or their tribally designated entities to the jurisdiction of courts other than tribal courts.

The legislation language should be revised to provide housing opportunities not only to low income individuals, but also to all Indians eligible for Federal services, based upon the Federal trusteeship.

The Federal Government has not only a fiduciary responsibility but a trust responsibility to provide opportunities for housing for all Native Americans.

Indian tribes or their tribally designated entities should not be subject to Davis-Bacon wages. All references to Davis-Bacon wages should be deleted.

I think within Pueblo country, we have a couple of examples of where in fact if we did not have to use, not have to pay Davis-Bacon wages, that in fact you can get more houses for the money.

My understanding is that in the specific case of the two examples that we have in mind, that's a project at Isleta and a project at San Juan, we were able to pay $55 per square foot as opposed to $80 per square foot for homes that were constructed in those communities.

Indian country also needs at least $1.5 billion appropriated each fiscal year, plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor.

As regards to the Pueblo, some of the specific concerns that we have include a concern that State-recognized tribes are identified as being entities that would be eligible for assistance under title VII.

We are concerned because it's our opinion that States do not necessarily have established criteria for recognition of tribes that in fact State-recognized tribes should not be included within the text of title VII. They should be considered as a part of the regular public housing program.

Pueblo of Laguna also feels that it is its right to determine if it will manage the program through a department of the Pueblo or designate a housing entity.

And that that concept must be protected and it does comply or conform to the provisions of tribal self-determination.

The Pueblo also proposes that the size of the tribe and their respective unmet housing needs be a major factor in the formula that determines funding levels.

We would also ask that the 248 and the 184 programs be maintained as they are essential to the development of the Indian housing market on tribal lands and the establishment of a home equity to finance small business development at Laguna.

I think in the private sector or in the non–Indian world, you have a situation where at least a homeowner is able to build up equity in a home. And this constitutes then a fairly sizable savings in dollars that an individual might be able to realize after a period of years. We think that same opportunity should also be accorded to Indian tribes.

Mr. Chairman, as you indicated, I did submit written testimony and it gives further elaboration to many of the points that I have mentioned here.

I'll close by saying that I truly appreciate the opportunity to be able to make this presentation.

[Prepared statement of Mr. Johnson appears in appendix.]

The CHAIRMAN. Thank you very much. And I'm very appreciative of your testimony.

Chief Dugan, I want to assure you that on the issue of allocation of funds, and all aspects of this bill, we'll insist that regulations are written by the tribes and HUD under negotiated rulemaking procedures, not consultation.

I know that's a concern that you and all the tribes have, so we'll insist on negotiations. Occasionally, consultation means a lot of different things to people, as you know.

Ms. DUGAN. Thank you.

The CHAIRMAN. Chief Dugan, how many members of your tribe are below the age of 21, what percentage, roughly?

Ms. DUGAN. 34 percent.

The CHAIRMAN. So more than one-third are young people. So you have a looming housing problem.

Ms. DUGAN. That's right.

The CHAIRMAN. Do you have the same problem, Chairman Wallace?

Mr. WALLACE. I was just thinking, I think we're about like 41 percent. We have a big pulse of young people needing homes and wanting to start families and a life for themselves.

The CHAIRMAN. Governor Johnson.

Mr. JOHNSON. 45 percent.

The CHAIRMAN. So your housing needs are going to go up exponentially?

Mr. JOHNSON. Yes; definitely.

The CHAIRMAN. Do you have any comments on the exchange that you heard Secretary Cisneros and I have, Chief Dugan?

Ms. DUGAN. I would like to point out that the Brooke amendment, the issue related to the Brooke amendment I feel that if tribes are truly sovereign, that we should be able to set up those fee schedules.

The CHAIRMAN. Chairman Wallace.

Mr. WALLACE. I very much appreciate comments on the rulemaking process and it was something that I left out that I wanted

to highlight. It's very important that the tribes are involved in this process to make this practically work.

The other thing is looking out for the small tribes with regards to establishment of a minimum base of funding for them.

And on the issue of liability, the provision that would allow HUD to sue a tribe needs to be amended.

As we talked about it, it kind of constitutes a kind of a veiled waiver of sovereign immunity. I believe that the relevant terms in the Government that self-determination contracts and compacts be incorporated in this area. In particular, its use should be limited to future block grant funds or existing unobligated funds.

With relation to the Davis-Bacon question, it's kind of, in my mind, a two-edged knife or whatever. Where I live, that standard would bring the costs down. Everybody else is pretty prosperous in Carson Valley and Lake Tahoe, so the wage rates are very high there.

So it kind of has a different tone to it in Washoe country.

The CHAIRMAN. Governor Johnson.

Mr. JOHNSON. I agree with——

The CHAIRMAN. Before you speak, could I just ask additionally that you comment on something? It's my understanding the San Juan Pueblos recently announced they used tribal funds to build a house in 55 days for two-thirds the cost of a HUD-funded home. They didn't have to import workers from off the reservation. Are you familiar with that situation?

Mr. JOHNSON. I'm not, but I believe Mr. Sisneros is. If you don't mind, I'd like for him to respond to that question.

Mr. SISNEROS. Good morning, Senator.

The project in San Juan and Ysleta are acquisitions, a method that was used in public housing that we retrofitted onto tribal land.

The tribes financed the deal through the private sector. It is not federal. And then when they build the homes, they turn around and sell them to the housing authority.

Subsequently, Davis-Bacon does not apply. The inspector general has done a preliminary review on that and finds it to be intriguing. The down side is that tribal governments have to finance the deal. I don't think they should have to. But there's three models available that show clearly that the bureaucracy and Davis-Bacon can save substantially.

In Ysleta's case, when you compare an $88,000 home, a brick veneer, two bathrooms, carpeting, two-car garage, landscaping, fencing, to the traditional HUD home of $98,000, four walls, a roof, one bathroom, no carpet, no input from the homebuyer, no driveway, and the real value of that house is probably around $65,000, I think it warrants more consideration.

The CHAIRMAN. Thank you very much, Mr. Sisneros.

And Governor Johnson, if you would provide those written details for the record, we'd appreciate that.

I learned of this from an article that was in Indian Country Today which describes it pretty well. Without objection, I'll make it part of the record. It's entitled "Building For Bertha, San Juan Pueblo Housing Program Puts It All Together Without HUD."

[Information appears in appendix.]

The CHAIRMAN. So I want to thank all of you for being here today. Many of you came from a long distance. I appreciate your testimony, and I want to assure you that, in our view, you'll be partners in this effort in keeping with the discussion I had with the Secretary a few minutes ago.

So thank you very much.

The CHAIRMAN. Our final panel is Ron Allen, who is the president of the National Congress of American Indians.

And Jackie Johnson, who is the chair of the board of directors, National American Indian Housing Council.

Ms. Johnson is accompanied by Ruth Jaure, who is executive director, National American Indian Housing Council.

Senator Stevens is not here but he wrote me a letter saying that he deeply regrets that his responsibilities as chairman of the Governmental Affairs Committee prevent him from being present at the hearing.

Senator Stevens says,

I hope you'll extend my thanks to the witnesses, and if you'll forgive my parochialism, express my special thanks to Jackie Johnson from Juneau, who has contributed a tremendous amount of time and leadership toward the development of Title VII. With best wishes, Ted Stevens.

Welcome back from Juneau, Ms. Johnson.

Did I pronounce your name right, Ms. Jaure.

Ms. JAURE. Jaure.

The CHAIRMAN. Ms. Jaure.

Ms. JAURE. Yes.

The CHAIRMAN. Thank you.

Ron, please proceed. You've been to these functions more times than you would like to recollect, so please proceed in whatever fashion you feel would be most effective.

STATEMENT OF W. RON ALLEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Mr. ALLEN. Thank you, Mr. Chairman.

I hope the policy of these lights is consistent with the taxi drivers' policy with the traffic lights in DC. They don't know how to use the red light. [Laughter.]

The CHAIRMAN. Next time we'll have the hearing in Indian territory.

Mr. ALLEN. I'm delighted to be here, Mr. Chairman. I appreciate the opportunity to come here and testify before you, to testify before both the committees.

For the record, my name is Ron Allen, president of the National Congress of American Indians. I'm also the chairman of the Jamestown S'Klallam Tribe of Washington State.

We are here on behalf of the NCAI which represents 210 tribes today.

We would like to let the committee know that we're fully in support of this legislation. We have been working very closely with the National Indian Housing Council with regard to this particular piece of legislation, and with our member tribes.

We think that this is a great opportunity. Our perspective is taking this piece of legislation and making sure that it fits in the con-

text of the fundamental principles you outlined earlier in your colloquy with Secretary Cisneros.

We agree that any piece of legislation that affects Indian country has to be consistent with the fundamental Federal Indian law and policy that's endorsed by this Congress and the administration.

We think it's critical that it's consistent with our objectives of our own goals of self-governance and self-determination and self-sufficiency.

Housing is just one of the components of everything that we're doing as governments and it's very important to us, so if those principles aren't endorsed, we have some serious problems with it.

We think with certain fine tuning that this law is ready to go, and it certainly is going to be very helpful for us. We really appreciate the principle that this legislation is endorsing in terms of recognizing the tribes directly and instructing HUD to work directly with the tribes and with the tribes' authorized entities, such as the Indian housing authorities, et cetera.

They are entities that are authorized by the tribes' sovereign authority, so they are under our umbrella and that is very important.

We think that you have heard many times, in past testimony, needs of Indian country and the problems. We know you have heard the numbers. We have heard numbers in the range of 90 to 100,000 houses that we need out there.

In your discussions with the previous panel, you have already identified that the need is going to grow because Indian country is growing. Our youth are growing in numbers and Indian country is growing in numbers, and it just means that the current problem that we have and the deficiency of needs is just going to get worse as we move forward unless we have a better capacity to address those matters.

This legislation is introducing a number of opportunities to advance the ability of the tribes to address that.

Now one of the things that we struggled with in the past is HUD is an entity that was structured for urban centers and urban settings, and it wasn't really well-structured to address Indian country. It hasn't really had the ability or the knowledge in order to know how to deal with Indian country.

To Secretary Cisneros' credit, he has worked hard at understanding who we are, and what our rights are as sovereign nations, and I think that as the HUD Secretary, he has stepped up a couple of notches in terms of previous secretaries of HUD with regard to addressing Indian country's needs. And his budgets and his policies have reflected that.

So this legislation, you know, will help advance it to another level. We think there's more to be done, but this will provide the kind of conditions that we're looking for. Flexibility, authorization, empowerment of the tribes, so that we can design these programs and manage these programs in a way to use those precious federal dollars that come our way in a more effective way. And we believe we have the capability of doing it.

It wouldn't matter whether it's a small number of 20 or a large number of 100 houses or if it's just one house. We believe that if we're in control of the development of those houses for our people,

we can build them more efficiently, more effectively and more cost effective. And the tribes certainly have the capacity to do that.

This legislation has some clouds in it that we would note to you that need to be addressed a little more specifically. Like the local housing management plan, there's a requirement for those plans.

Now, as you are well aware, there are 557 tribes in the United States and many have capacities and already have plans in place. Many don't.

So for the requirement to be essential or a necessity before the tribes access these dollars, I think the legislation needs to take into consideration the needs of those smaller tribes or those tribes that don't have the resources to assist them in putting those plans together, so that it's not an impediment or obstacle for tribes to access it.

We also have a section in there dealing with negotiated rulemaking, and I have been very active in the self-governance negotiated rulemaking process, and 638 contracting as well, and I know that's a very delicate process.

So I encourage you to have the kind of legislation or the kind of report language that ensures that the Administration understands the intent of the Congress and the intent of Indian country with the purpose of this particular title and how to advance it.

Because in that particular forum, I have had many experiences where we find ourselves with the policymakers and their lawyers discussing what the intent is, even though we had great debate and deliberation with you with regard to what our objectives are.

And things like the Davis Bacon and those kinds of conditions are very important. We need to make sure they understand where we're coming from, so I think that's very important.

Allocation formula is an important criteria. We urge you, Brian Wallace of the Washoe Tribe noted to you that there are small tribes out there, a lot of small tribes. We would encourage you to take into consideration maybe opportunities for base funding for tribes and moving forward into the larger tribes so that at least the small tribe has something to work with. We think that's a very important issue.

There are conditions in here for public and private financing.

Yesterday, I participated in an event with the Navajo Nation and Fannie Mae Corporation and Financing Institute.

That was a great opportunity. You can see that through initiative and creativity and a lot of perseverance, we can make things happen on the reservation where it's a very unique political and legal standing.

And we hope that this legislation would help to advance those kinds of opportunities.

With regard to the corporation, you were going to authorize a certain amount of dollars for this legislation.

We encourage you to fight hard for those dollars because they're critically needed.

Governor Johnson had noted, in his opinion, that we need $1.5 billion in order to really do our job, and we're always fighting with insufficient dollars to get the job done. So we think that is very important.

Let me just conclude by saying that I believe firmly that tribes have moved forward at a whole new level of our capacity as governments.

The NCAI has been working very closely with our counterpart, the National Indian Housing Council. We believe we can make things work. We think we can show that we can become a vibrant and very powerful component to this society going into the 21st century.

We need you to endorse it, we need you to support us, we need you to help the Congress and instruct the Administration in terms of how we can work together and to recognize us so we can stand in our rightful place in this society.

Thank you.

[Prepared statement of Mr. Allen appears in appendix.]

The CHAIRMAN. Thank you very much, Ron.

Ms. Johnson, welcome back.

STATEMENT OF JACKIE JOHNSON, CHAIR, BOARD OF DIRECTORS, NATIONAL AMERICAN INDIAN HOUSING COUNCIL, WASHINGTON, DC, ACCOMPANIED BY RUTH JAURE, EXECUTIVE DIRECTOR, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Ms. JOHNSON. Thank you.

My Tlingit name is Kus'een. I am a Raven Sock Eye. I come from Juneau, Alaska. I am the executive director of the Tlingit-Haida Regional Housing Authority. I sit on the Alaska Housing Finance Corporation Board, and I've been recently appointed to sit on the Community Development Financial Institutions Trust Fund Advisory Board.

But I'm here today as the chairperson of National American Indian Housing Council.

And I don't need to reiterate to you the numbers of need for Indian housing. It's well written in my testimony that I have submitted to you, and I'm sure you, Chairman McCain, know those numbers from your own State.

I would like to give my sincerest appreciation to not only you, in your chairmanship, for the direction and the support that you've given to Indian housing, but to all the staff members who are sitting here today who definitely have had an interest and a very interactive interest and support with National American Indian Housing Council, in reviewing this piece of potential legislation throughout its processes, including those of the staff members from the House.

The CHAIRMAN. Don't you think there's too many of them? [Laughter.]

Ms. JOHNSON. Actually I don't ever think there's too many staff members. [Laughter.]

Ms. JOHNSON. The more we can teach them, the more education, the better off we will be.

I would like to deviate from my written testimony just to let you know the process and what happened in creating this piece of legislation.

And what that was was——

The CHAIRMAN. Could I interrupt for just one second?

Ms. JOHNSON. Sure.

The CHAIRMAN. I noticed Senator Kerry here, who is heavily involved in this issue, despite the fact that there's not that many Native Americans remaining in Massachusetts, except for those that want to acquire all of Martha's Vineyard. [Laughter.]

I appreciate very much your assistance in this legislation, Senator Kerry, and I very deeply appreciate your initiatives on this.

Please proceed, Ms. Johnson. I'm sorry for the interruption.

Ms. JOHNSON. No problem. Thank you.

What I would like to let you know is the process that was developed, that we went through in developing this piece of legislation.

For numbers of years, there's been resolutions passed by NCAI, which I happen to chair the Economic and Finance Committee for, which housing fits under, as well as from National American Indian Housing Council, asking for different things such as getting rid of the Brooke amendment, for recognition of Indian trust status in housing, for the separation of public housing?

The CHAIRMAN. Could I interrupt again, Ms. Johnson?

Ms. JOHNSON. Yes.

The CHAIRMAN. You said getting rid of the Brooke amendment.

What is your response to Secretary Cisneros, who we highly respect, and to his argument that you should be prevented from raising the rent too much higher for very poor people.

What is your response to that?

Ms. JOHNSON. I too respect the Secretary's concerns.

However, from the Indian perspective, we believe that we should have the ability to set rents the way that we feel needs to be for our community.

The Brooke amendment worked in reverse in Indian country for many years. It sets rents at a higher level than we could really afford. Thirty percent was, in many testimonies, and as well as resolutions from the National Congress of American Indians, stated many times that our elders couldn't afford 30 percent of their income, especially in rural and remote settings where their disposable income was lacking.

The CHAIRMAN. Ron, do you agree with that?

Mr. ALLEN. Absolutely.

The CHAIRMAN. Thank you. Please proceed.

Ms. JOHNSON. And so when HUD came out with their first blueprint for housing, it was at that point that National American Indian Housing Council said, we're tired of being responsive to governmental decisions about housing, let's put together a position that we have for Indian housing. What is it that we need and what is it that we want it to look like.

And we prepared a position paper. It was adopted by the tribes as well as it was adopted by the National American Indian Housing Council Board, and that was the basis for this piece of legislation.

We appreciate Congressman Lazio's support for our position and taking it forward.

We have had numerous responses. We have had numbers of comments come in. We have put that together in a book that we submitted to the Senate with all the comments that came from the

House side, and have continued to allow for comments, every kind of comment to come forward and have submitted those regularly.

But what I would like to do here is to let you know that since the process was very interactive, there are still a number of things that we would like to have changed or be considered.

Yesterday was National American Indian Housing Council's 22d annual meeting. At that meeting, during the resolution process, we adopted a resolution in support of this piece of legislation, and itemized a number of other considerations in different sections.

And that resolution I would like to submit as part of my testimony tomorrow when a draft copy is a little bit cleaned up for your reading.

One of the first things is very important to us, and it came up very loudly and clearly from Indian country, was that the authorized funding level was too low, that at least it needed to be authorized at $900 million.

We believe this increase is important because Indian country began receiving Federal dollars 25 years after the rest of the American population, and we haven't even begun to catch up with the massive needs of our people.

We also note too that we have a great number, approximately 63,000 Native Americans waiting for housing. And we also know that with the block granting and the new process of doing that, that we will need higher authorization for dealing with that.

Some tribes don't have Indian housing authorities at this time period. All tribes will be authorized to have Indian housing programs under this bill.

In addition, another comment that you've heard very clearly today several times, and that is dealing with the local housing plan. It needs to be simplified. It needs to be part of negotiated rulemaking.

I'm glad to hear your comment that you support that, and so I won't go into all the detail of how we feel, but that needs to be done.

Third, some further language needs to clarify what's going to happen to the Native American Housing program between October 1, 1996 and October 1, 1997, assuming that this public housing reform bill is passed?

The way it is proposed now is that Native American communities can stay within the current 1937 Housing Act, and then at that later date, we will change to the new program.

National American Indian Housing Council would like you to thoroughly consider this. We believe that it will be more important for us to have a transitionary period, during this transitionary period, that we all start active in the new program, that we start moving forward, we start making the progress that's needed so that we don't have to be running under the 1937 Housing Program, and then trying to figure out, and then at the same time using the same amount of funds we have, plan for the future. We need to have some kind of a transitionary period with a transitionary program that will put us into the step moving forward and prepare us for that time period when we are fully under the new housing act.

The other thing that is important to us, and you've heard once before today, or maybe twice before today, and that was to replace

the words "In the United States District Court," which is under section 751(c)(2) with the words "in any court of competent jurisdiction."

And as was stated earlier today, the National American Indian Housing Council believes that current language denies the recognition of our tribal courts and our tribal sovereignty. It sets a precedent for hearing cases outside of the tribal courts' area, even though the violation occurred within our jurisdictional area.

This replacement language preserves tribal courts' jurisdiction if such jurisdiction does exist.

And fifth, another consideration that we would like to add, that is not in the piece of legislation anywhere, and that's to insert the following language under section 723(c), and that's recipient insurance.

We would like to make noted that housing authorities have created a very successful Indian housing self-funded risk pool which manage competitively prices for fire and extended coverages and National American Indian Housing Council believes this language will continue to allow IHAs to maximize their insurance dollars.

The other point that I would like to make, and I think it's very timely, is a piece of legislation that you, yourself, cosponsored and introduced, and that's the Native American Financial Services Organization Act.

In our meeting yesterday also, we passed another resolution in support of trying to move that piece of legislation forward.

We think that this is very timely with the new Indian housing law, that we be able to have a component such as NAFSO being considered.

We believe that NAFSO will help us leverage the dollars into the loan guarantee program that was offered up to us, not only with the 184 loan guarantees but the loan guarantees for the block grants.

It will help with the added infrastructure and the technical assistance that's going to be needed for tribes and housing authorities to meet the needs under this new housing act.

And that we will be able to more successfully be able to deal with the needs of our constituents, the Indian people of our communities.

We also, in closing, I would like to let you know that we know that the Federal dollars are decreasing. We also know and feel that the Federal Government has a responsibility to assist us to meet those needs.

But I, as an Indian person and as a tribal leader, as many others, also know that we are willing to step up to the plate and to take that responsibility on, to take upon our shoulders the part that we can take upon us, and that this Indian Housing Act is the first step in allowing us to do that.

This is a piece of historical legislation, and with it and its component, the NAFSO piece, we believe that we will be able to take a greater responsibility for resolving some of the needs of Indian housing within our communities.

But I also want to let you know very clearly we know that we have great poverty levels in Indian country, and that this piece of legislation is a step into the future, but we will continue to need

Federal housing dollars, we will continue to need assistance to be able to help those at poverty levels in meeting the needs of housing.

I would like to thank you very much for this opportunity to testify and once again thank all the many staff that are here that have been very supportive of all of us, and we continue to want to submit our comments.

We'll submit those resolutions and additional comments that we had from our meeting, and hope that this continues to be an interactive process, this through negotiated rulemaking.

Thank you.

[Prepared statement of Ms. Johnson with Information appears in appendix.]

The CHAIRMAN. Thank you. If you keep praising our staff, pretty soon they'll want a pay raise. [Laughter.]

Thank you for your testimony, Ms. Johnson. Without objection, we'll have the statements of other Senators will be included in the record. And the record will be kept open in order for questions by other Senators to be submitted.

Mr. Allen and Ms. Johnson, what percentage of the tribes are ready to fully assume the responsibilities of administering consolidated block grants as proposed in title VII?

Ms. JOHNSON. I wouldn't know that number off the top of my head, but we can certainly look to the success rate of tribes that have been active under, who were doing their own 638 and who also self-governance tribes, such as my tribe is in.

I believe that there's a great number of housing authorities who are ready to grasp forward, which will be the tribally designated housing entities, the opportunities of the future.

I do know that the smaller tribes and housing authorities will need some technical assistance and some advice, and we're hoping that that technical assistance component that's attached to the bill will strongly be stayed there for that purpose.

But the models created by the housing authorities that are able to move forward, will be able to share with those smaller housing authorities, and that we'll be able to help work through negotiated rulemaking a plan that's obtainable for all.

The CHAIRMAN. Do you see any particular problems with consolidating CDBG funds for tribes into a single block grant created in title VII?

Ms. JOHNSON. Myself, I have been asked that question before, and since that is a decision that should be made by tribal governments, I reserve that right for the representatives of tribal governments, since I represent housing entities.

Mr. ALLEN. My opinion about that is it has some awkwardness to put in a block grant that the tribes can have each year. Right now, the tribes can go out there and compete for those dollars, and they have substantial projects that they're competing for, which allows those projects to be moved forward.

The problem will be for tribes if they have a bigger project and they have a base number of dollars they're allowed to have through that CDBG money, then the issue is can they carry the money forward in terms of advancing a particular project that is of practicality or priority to that tribe.

That authority, that condition probably would be critical to its success because it's going to be a smaller amount of money, spreading it out across Indian country.

The CHAIRMAN. Ms. Johnson, I'll work with Senator Mack on this transition period issue that you have raised.

For both of you, in your view, is it in keeping with your concept of tribal sovereignty if we wrote into this legislation that the tribal governments themselves can decide whether Davis-Bacon should apply to their tribe?

Mr. ALLEN. Absolutely. I have objected to that law and those conditions being imposed on tribes for my whole career, and I've been involved with my tribe for 20 years.

I know that Davis-Bacon does not apply to Indian country well at all, and it doesn't mean that the tribe's employment wage levels are unreasonable or unnecessarily low. The rates are consistent with the market standards wherever we are, and they are appropriate for whatever those work vocations are.

We have Tribal Employment Rights Ordinances [TERO] across the country. The majority of tribes have TERO operations to provide assistance for employment and employment rights in Indian country.

Our authority as sovereign nations should be able to control and manage those affairs, and we can do it with the same kind of propriety and objectives that Davis-Bacon intended for America.

The CHAIRMAN. Is that why the Housing Improvement Program [HIP] has worked so much better because you're not bound by that?

Mr. ALLEN. Absolutely, absolutely. It's been much more successful. We've been able to build the San Juan Pueblo you mentioned earlier. Because we get those restrictions released from us, we're able to pay the true market value for the services, for the building construction costs, et cetera, and it makes a big difference.

We can build more houses for less money and the same quality of houses.

You know, sometimes people think that in Indian country that they have this notion of the economies of scale that you have to go out there and build a large number of houses in order to build homes for economical cost, and they use engineering costs, et cetera. That we need to bring engineers in to engineer, you know, a hundred houses or whatever.

That's not true. The notion is you have to have the expertise on staff. You don't need it. You can go out and hire it. And you just pay what is necessary for that house or for that particular project.

So we have become very efficient with using the market the way it's available to us for these kinds of projects.

The CHAIRMAN. Well, the unfortunate aspect of this, Ron, is that it's such a huge political issue between the parties and there is the fear on the part of some, that if we gave exemptions to tribal governments, it would mean some erosion of the overall Davis-Bacon. It's a very controversial issue.

I understand that and I'm sure that Native Americans understand that. But when Indians directly suffer because of it, then it seems to me that maybe we ought to raise the level of debate a little bit and not have it so partisan, and frankly so damaging.

You and I have seen homes that could have been a third larger, given the way that the funds are allocated, a certain amount for each home. We've seen homes that could have been a third better if the funds had actually gone to the construction and furnishing of the home, as opposed to the, "prevailing wage." And we see this in Arizona in spades because of the distance between the metropolitan areas where the wages are much higher.

It's something we're all familiar with but it still has to be repeated over and over again for the record because there's many people who don't understand these unique problems.

But obviously, I'm preaching to the choir.

Ms. Johnson did you want to do anything?

Ms. JOHNSON. I concur with Mr. Allen's comments. I did want to say that we've had this debate many times at National American Indian Housing Council.

Because as Chairman Wallace stated, in some places it works differently.

And that's why I feel very strongly that it should be the tribe's decision whether or not they should apply Davis-Bacon and how it should be applied.

And that's the reason why TEROs were created under tribal government so that we could make those decisions about our employment and the cost of doing those things.

The CHAIRMAN. Ron you have any additional comments?

Mr. ALLEN. Well, I do believe that there's some other conditions in the legislation that I would urge you to take a serious look at.

You know, there's the non-compliance section that we have certain concerns over what requirements or what authority the Secretary has if the tribes are not complying with conditions of this legislation.

And we have reservations about it from the perspective of: Is it honoring and respecting the tribes' governmental authority and how will we resolve those issues within the framework of our legal capacity.

And we think that there can be some fine tuning. That's one of the examples that I think is very important.

And I want to continue to underscore the need to recognize the intent of this legislation so that when we do convert it into regulation, including the issue that Jackie is referring to in transition, how it will be implemented is critical. It is really critical.

Having been there and involved in it for many years, once you've passed it and we go to the administration, it's a heck of a challenge for us to make it a reality for those of us who are in the grass roots, making it work. And that's a very important issue.

The Davis-Bacon, we concur with you, if there's a way for us to work together to generate the kind of confidence that the interest of laborers on the reservation will be protected, and still be respectful of the tribes' sovereign authority, there's a way to bridge that gap. They just need to learn to understand Indian country.

You know it. We are preaching to the choir, to each other with regard to that matter. We just need to know that those constituents who represent that interest group out there need to become a little more enlightened about what Indian country's about.

We are still an untold story in many corridors.

The CHAIRMAN. Ms. Johnson.

Ms. JOHNSON. Yes; I'd like to make one additional comment, and that is there has been a great deal of concern about particularly from small tribes and small housing authorities about the recognition of the TDHE and the grant recipient.

And I would like to make sure that that's very clear in the language that unless a tribe chooses to make another decision, the IHA, as it currently exists, can be the TDHA and the grant recipient. And then if the tribe chooses, just as it could of yesterday and tomorrow, they could make another decision about what their TDHA is or what their relationship is.

It needs to be clear because many of the tribal governments are confused whether or not they're going to have to redesignate or redo some other kind of ordinance.

Right now most tribes' housing authorities were created underneath the tribal government under model ordinances that it had currently enacted.

Therefore, the TDHA, under this language, the purpose was to recognize the fact that the tribes did have the right to create an IHA, which they did do, and that IHA is the recognized tribal designated entity.

The CHAIRMAN. As you know, we are in an election season and the prospects for a lot of legislation between now and when we go out of session is not good.

However, on this issue and this legislation, I sense a broad bipartisan support. There's clearly a compelling need for it. And I'm optimistic that we can get this legislation through this year, and that's why I urge you to make sure we have all of your recommendations, and as you said, Jackie, work with the staff and with us to try to finalize this language, because I do believe we can give final passage to this very badly needed legislation this year.

Thank you all for being with us again today, and this hearing is adjourned.

[Whereupon, at 11:40 a.m., Thursday, June 20, 1996, the joint committee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Hon. Byron L. Dorgan, U.S. Senator from North Dakota

I first would like to thank the chairmen of the Senate Committee on Indian Affairs and the Senate Committee on Banking, Housing and Urban Development for scheduling this very important hearing. A House-Senate conference committee will soon begin consideration of a major Indian housing reform proposal which the Senate has never debated. Therefore, it is incumbent upon us that we use today's hearing to learn the views of tribal governments and Indian housing experts about the critical issues that the conferees, and eventually the full Senate, will consider.

The current housing conditions faced by most Native American communities are shocking. A recent Urban Institute study revealed that approximately 27 percent of all Indian households reside in substandard dwellings that are overcrowded, and/or lack kitchen or plumbing facilities, electricity, and/or central heating. What's more, the homeless rate for Indians is three times the national average. In North Dakota, both the Devils Lake and Turtle Mountain Reservations face overcrowding conditions that are over 30 percent, according to the most recent Census Bureau report.

Clearly, the current situation is unacceptable. I must say that I agree with the tribal leaders in North Dakota who have expressed their overall support for Title VII of the United States Housing Act of 1996. For decades, Indian housing programs have been based on the same rules and regulations that govern public housing programs, which are generally urban in nature. This fails to recognize the unique characteristics of most Native American communities, which are primarily rural and located in isolated areas. It is high time that we separate Indian housing from public housing, and give tribal entities the housing reforms they have rightfully sought for years.

Tribal governments and housing authorities should have the ability and flexibility to plan for and manage community development projects, consistent with meaningful accountability standards. Such an idea is fundamentally in keeping with the principles of self-determination and self-governance, and I hope that we will embrace it.

I appreciate having the opportunity to hear the testimony of the witnesses today. I am anxious to work with my colleagues to ensure that the final title VII provisions address the concerns raised by some tribal officials while preserving the intent of the original proposal.

Prepared Statement of Hon. Patty Murray, U.S. Senator from Washington

Mr. Chairman, I am pleased we are holding this joint hearing today to discuss title VII of the House-passed public housing reform bill. I want to keep my comments brief because I see we have a very distinguished list of witnesses joining us

today, and I look forward to hearing from Secretary Cisneros, Ron Allen—chairman of the Jamestown S'Klallam Tribe in my home State and many others.

As you know, the Senate companion bill does not include major changes to the current manner in which HUD works with Indian Housing Authorities and tribal housing entities. So, this hearing should be very useful as we move further into the conference on this bill.

As we all know, S. 1260 passed the Senate with great bipartisan support. Mr. Chairman, Washington State's housing authorities and Indian Housing Authorities often tell me they could do a better job if given more flexibility. And they tell me our Federal housing regulations stifle our local housing authorities' ability to provide safe and affordable housing. They tell me they need more independence, and they need to be able to set their own standards; standards that reflect the unique needs of their communities.

I understand this sentiment. Fortunately, Washington State is home to some of the finest, most-progressive housing authorities in the country. They work well with their communities and have been able to put together some innovative financing schemes and commendable housing projects.

The housing reform proposals before us move us in the right direction.

And I look forward to hearing more about the specific Indian Housing provisions included in the House bill.

PREPARED STATEMENT OF HENRY G. CISNEROS, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Chairmen and members of the committees, thank you for holding this hearing today and for your efforts to provide the Native American community with a housing program which they can truly call their own.

As you well know, the current Indian Housing program was created as a result of a legal opinion in 1961 which allowed Native American Nations to participate in the already existing Public Housing program. One year later, another administrative determination created the Mutual Help Homeownership program. While these actions were an expedient solution to assist Native Americans to address housing conditions that had been and remain some of the most desperate in this Nation, they put into motion a 35-year effort in which Native Americans have had to cope with a program that was not designed for them and their environment but rather for urban areas.

In 1988, the only separate piece of Indian legislation ever passed was completed and that simply "authorized" the administrative determinations made 27 years earlier.

Despite these institutional barriers, the men and women of the Indian housing industry have worked to construct almost 100,000 housing units and provide a resource which has been one of the prime factors in an almost 1,000 percent increase in the Native American population since the 1960's.

It is time that Indian country receive a program that it can call its own. This program should be based on the needs and conditions found on Indian reservations, not in the Nation's cities. It should respect the right of each individual tribe to make its own decisions and to set an individual course which befits its own unique situation and traditions.

Mr. Chairmen, this department firmly supports the concepts and direction of this legislation. I will commit the full resources of this department to insure that, if enacted, it will be implemented quickly and efficiently and in a manner consistent with the objectives of these committees and the desires of the Native American community.

There are only a few issues which I would like to raise with you today. The first relates to the protections offered by the Brooke amendment which are not presently in the proposed legislation. The Native American community has long desired the ability to lower rents for their elders, the disabled and other special groups in its community. We support this desire.

However, we believe that the elimination of the Brooke amendment entirely will assist some families, but place a greater rental burden on others. We recommend that the Brooke amendment be retained with a provision which allows tribes or their designated housing entities to set a lower payment structure, but provides a ceiling at the current 30 percent of income. It is our feeling that this will provide a protection for low income persons and allow tribes sufficient flexibility to meet the needs of their special populations, consistent with the bill's overall theme of flexibility and local decisionmaking.

A second area where we suggest changes-relates to the comprehensive planning requirements. While we firmly support the need for better planning in Indian housing, the bill as presently written will place a large and unnecessary administrative requirement on Native American communities. It is our belief that the plan requirements should be significantly reduced and should be developed in a manner which promotes reliable performance measurement and effective Federal oversight, while reducing paperwork requirements which many small Native American communities will find burdensome.

The Department agrees with the provision permitting us to continue to serve those few State-recognized tribes currently operating Indian housing authorities. However, we would ask that the conferees clarify in report language that, while we do not oppose inclusion of those tribes, the sole purpose of doing so is to help them to maintain their operations, not to accord any additional justification toward broader Federal recognition of these tribes. We would also recommend that the conferees clarify that only those State-recognized tribes with Indian housing authorities currently under an Annual Contributions Contract with the Department are eligible for this program, without allowing new State-recognized tribes to participate.

A third area relates to the labor standards provisions in H.R. 2406. The Administration has consistently opposed the repeal of the Davis-Bacon Act, including provisions that would result in the piecemeal repeal of its coverage. The Administration therefore strongly opposed the provision in H.R. 2406 that would allow the waiver of the Davis-Bacon Act protections for Native American projects, which would-constitute such a piecemeal repeal. The Administration believes that projects for Native Americans warrant the same protections applicable to other projects under Davis-Bacon and related acts.

In addition, the Administration believes that the provision excepting volunteers from Davis-Bacon Act prevailing wage requirements should be revised to ensure that the exception is limited to bona fide volunteers, and is consistent with the principles of the Fair Labor Standards Act.

There are a number of additional items in the proposal which we support. We are pleased that you have set a priority in this new program to maintain those housing units previously developed under the 1937 Housing Act. It is imperative that this existing resource remain viable as it constitutes an integral part of tribal housing activities.

We are very supportive of the provision which would allow a 50-year leasehold interest in trust or restricted lands when used for residential housing purposes. This is a key requirement in the efforts of the Department, the Indian housing community, and commercial lenders and the secondary market to increase the level of private market financing available to Native American families.

The Department also supports the provision which clarifies that Tribal members will be provided an admissions preference to the housing developed by their Tribe. Although it is possible to do so in the current Mutual Help program, many Tribes have been concerned that it is much more difficult to do so under existing law in their rental programs. The bill will resolve that problem.

Attached to this testimony are comments of a more technical nature. This Department and the Department of Treasury may be providing additional technical changes to the Committees. We will work closely with you to clarify these additional issues, which include: providing a slightly longer review period once the local housing plan is submitted; correcting language under the loan guarantee program authorized by Section 771 for guarantee fees; aggregate outstanding loan limitations and compliance with the requirements of the Federal Credit Reform Act; and, some similar matters in the Section 184 Indian Housing Loan Guarantee Program authorized under the Housing and Community Development Act of 1992.

I especially want to thank you, Mr. Chairman for your leadership as a strong advocate for Native Americans, Alaska Natives, and Native Hawaiians. We especially appreciate your efforts in recent years to preserve funding for HUD's Native American programs in the face of proposed cutbacks. People that care about the quality of life for Native Americans are well served by your chairmanship.

Before I conclude my remarks, let me mention one other matter. This issue is one of paramount importance. Today Indian Housing is funded from a number of categorical grants, many of which Tribes share with the Public Housing program. We respectfully request that both the Authorization and Appropriations Committees carefully consider the transition to the new Indian Housing Grant program to insure that sufficient funding levels are established and maintained.

As I said earlier, we look forward to working closely with your staff to assist them in addressing these issues.

PREPARED STATEMENT OF A. BRIAN WALLACE, CHAIRMAN, WASHOE TRIBE OF NEVADA AND CALIFORNIA

Good morning Chairman D'Amato, Senator Sarbanes, Chairman McCain, Vice Chairman Inouye and other distinguished members of the Committee on Banking, Housing and Urban Affairs and the Committee on Indian Affairs. Senators Bryan and Reid, I pass along the warm regards of not only the Washoe Tribe but also the other tribes located in Nevada, we greatly appreciate the keen interest you have both taken in this very important issue. Additionally, as part of the Washoe Tribe is located California, I would like to let Senator Boxer know that our housing director has been in contact with a number of the California tribes and I believe our comments reflect many of their concerns as well.

I would like to thank the committees for holding this joint hearing on Indian housing, and I am particularly pleased to have an opportunity to present the views of the Washoe Tribe regarding this important legislation. As the Chairman of the Washoe Tribe of Nevada and California I have a solemn obligation to ensure that the tribe's housing, economic development, and land use concerns are properly addressed. The Washoe Tribe is made up of four separate communities located in two States and four counties. The Washoe Tribe has about 1,560 members and we currently manage 231 units in four separate communities. We currently have 75 families, who meet the existing HUD poverty requirements, on our housing waiting list. Each family represents a unique situation, but they are all currently suffering under unacceptable housing conditions, either living in substandard or overcrowded housing. Additionally, we have a constant flow of tribal members, living off the reservation, who want to come home.

Title VII is intended to make some very basic changes in the Indian housing program which Indian tribes and Indian housing authorities have been requesting for some time. First the bill proposes that the Indian housing program be based upon the political and legal relationship that Indian tribes have with the United States. This is an extremely important issue because it recognizes that Indian housing is a function of the government-to-government relationship between Indian tribes and the United States and that it is based upon the unique trust responsibility that the U.S. Government owes to Indian tribes. Indian housing is not a form of welfare, it is assistance provided to tribal governments based upon the political relationship that tribes have with the United States. Pursuant to this objective, the legislation expressly recognizes that Indian housing is a function of the trust obligation owed by the United States and it provides tribal governments with a direct role in the administration of their tribal housing program. Second, the legislation represents an effort to provide greater local control to the tribal government. To this end, the legislation separates Indian housing from other public housing programs and the inapplicable regulations which govern them. This is a change long advocated by tribal governments and Indian Housing Authorities and should allow us to provide better and more efficient housing on the reservation. It should free us from many inapplicable Federal regulations designed to address urban housing, enable long-term local housing planning, and allow a more flexible use of the housing money. Tribal governments or housing authorities need to be able to establish local housing criteria, establish tribal regulations, and to leverage funds and use them flexibly to best address the housing needs of our local communities and to get the most out of each dollar.

I would like to thank Congressman Rick Lazio and his committee staff for working with Indian country to develop legislation that addresses Indian housing in a manner that takes into account these unique factors. Title VII of H.R. 2406 is a step in the right direction, and I believe that with some work it could represent a significant accomplishment for Indian housing. However, there are certain changes that need to be made to ensure that this legislation does not inadvertently create new hardships and hurdles that would impair the ability of Indian tribes to address the extreme housing needs on the reservations. Assuming the few concerns specified below can be addressed, I whole-heartily endorse the Native American Housing Assistance and Self-Determination Act of 1996 and believe it will serve as a good step forward for Indian housing.

The No. 1 concern for the Washoe Tribe, as well as the many other small tribes located in the States of Nevada and California, is the protection of small Indian tribes in the allocation formula. A lack of any available housing can put the continued viability of small tribes in jeopardy. If there is little or no existing housing on the reservation, it is difficult for the tribe to maintain a vibrant tribal community. The problem is especially acute with the small reservations located in remote rural areas, where there is no available housing near the reservation.

The allocation formula set forth in section 742 is simply too ambiguous and open ended. We understand that the drafters of the legislation and HUD intend to fund the block grants through three formula funding streams (operations, modernization, and new development), and that the operations and modernization formulas currently being used would continue to be used. Therefore, a new formula would be established only for the new development funding. We would like to see this formula breakdown expressly included in section 742. Because the formula factors would only apply to new housing development, and not operation or modernization, there would no longer be any reason to include the current housing stock as a factor.

The formula factors listed in section 742 also need to be expanded to include a separate factor to require that the new development funding formula be adjusted to provide a base funding mechanism for small tribes, which are not part of umbrella tribal housing entities. Such a minimum base funding level should be no less than the percentage of new development funding that they currently receive.

Section 751(c) would provide the Department of Housing and Urban Development with the authority to sue tribal governments to recover of any block grant funds which HUD determines have been expended inconsistently with the act or a tribe's housing plan. On its face this may look innocuous, but it represents a potential waiver of tribal sovereign immunity. It has the potential to bankrupt tribal governments and would potentially expose all tribal assets, including tribal revenue generated independently through tribal enterprise, to potential liability. This could jeopardize the ability of Indian tribes to provide basic government services, especially at a time of declining Federal funding. At Washoe, for example, we supplement the budgets of our governmental services with revenue which the Tribe generates through tribal enterprise in the private market. These Tribal funds support, among other things, our Tribal police, and Tribal courts, adolescent mental health, and cultural and language preservation. It would be disastrous if HUD were to tie up these critical funds because they felt that the Tribe had not properly followed a 5-year housing plan.

I was pleased to learn that both HUD and Congressman Lazio have no intention of subjecting tribal assets, which are not related to the housing block grant funds to such potential liability. We understand that the intent of section 751(c) is merely to subject future block grant funds to a potential suit. This is essentially what HUD does now. We would, however, like to see the potential recovery of an action filed under this section limited to future block grant funds which the tribe would otherwise receive or to unobligated block grant funds for the current year. This would provide HUD with the accountability which they require without subjecting tribal governments to potential bankruptcy.

Similarly, title VII provides a particularly unreasonable process for tribes to appeal administrative decisions to terminate, reduce, or limit block grant payments. Instead of permitting a tribal government to appeal the administrative HUD determination through an administrative process, as is regular procedure for administrative determinations, tribal governments or tribally designated housing entities would have to appeal the HUD decision in the Federal circuit court. I am uncertain what the rationale is for creating such a burdensome procedure, but it would be unreasonable for tribes, especially smaller tribes, to prepare an appellate brief to appeal an administrative determination. Furthermore, it would appear to be totally unworkable. Under this scenario, the administrative determination would not have been heard by an administrative review panel or administrative judge, it would not even have been heard by a Federal district court judge. There would be no judicial record on which to base the appeal. Is it proposed that the Circuit courts will sit as trial courts for such appeals? This is certainly not something desired by the Federal court system. Moreover, this provision raises a number of potential constitutional issues under the Due Process Clause.

Rather than trying to reinvent the wheel, we suggest that title VII just incorporate the relevant provisions of the existing Indian Self-Determination and Education Assistance Act [Public Law 93–638, as amended by Public Law 103–413, Public Law 103–435, and Public Law 103–437]. This would be particularly appropriate for legislation entitled the "Native American Housing Assistance and Self-Determination Act of 1995".

These provisions have served both the Department of the Interior and Indian tribal governments well in self-determination contracts and self-governance compacts, and they should serve equally well in this new housing self-determination act.

Section 782 proposes that 50-year leasehold interest in trust land be permitted. As I understand it, this section of title VII was added to the Indian housing self-determination act at the insistence of Fannie Mae. Despite the efforts of tribes and Congress to address the concerns of the federally subsidized secondary mortgage market, they are insisting that the trust lands be subjected to a 50-year lease hold.

Such a provision may be the final hurdle to tribal access to the secondary market. If that is so, then its inclusion in the legislation may be warranted. However, the provision should be amended to ensure that tribal governments maintain their ability to regulate land use matters on the reservation.

First, the provision should be expressly limited to home sites. As a tribal chairman, I am concerned that if the provision is not limited to residential homes, businesses would put excessive pressure on tribes to grant 50-year lease provisions in all lease contracts effectively removing the authority of the tribal government. The current title VII language apparently intends to limit this provision to land used for residential purposes, but there is a technical drafting error (please see the clause on line 4 two of p. 389 "for residential purposes" which is left hanging after a period). There has been, however, a technical error and the words. This concern would be best resolved by adding the words "for the exclusive use of housing development" should be added after the words "Indian owners,". Second, the provision should be expressly subject to tribal law. The decision of whether or not a residential leasehold is permitted for 50-years falls within the authority of a tribal government. If a tribe believes that, in certain circumstances such leaseholds are not in the best interest of the tribe, the tribe should maintain the authority to prevent the leases through the tribe's ordinances. To ensure that tribes do not forfeit this fundamental governmental authority to HUD, the words ", unless otherwise restricted by tribal law." should be added on at the end of section 782(a), and the word "Federal" should be added before the word "law" of section 782(a) on line 23 of p. 388.

I am sure that all would agree that strong communities are communities made up of mixed income families. The last thing we want to see is a Federal program that creates rural slums. Unfortunately, in many circumstances, tribal members that achieve a moderate level of income success are unable to live on the reservation of their tribe because there is no available nonfederally assisted housing. Due to the lack of infrastructure and available housing stock, and due to land restrictions which make private mortgages problematic, moderate income families are effectively precluded from living on the reservation. Often, the only housing available on many reservations is tribal housing developed through Federal assistance. If moderate and medium income families are precluded from purchasing such homes, only low income families will be able to live on the reservation, resulting in a fixed low income community. By providing stronger reservation communities, tribes will better able to establish self-sustainable economies on the reservation. In light of the trust obligation of the United States to ensure that tribes have sustainable homelands, we strongly urge that the Native American Housing Assistance and Self-Determination Act allow to the greatest degree possible flexible income targeting. To enable reservations to maintain strong mixed income communities section 725 should be amended to provide a waiver for the low-income targeting requirements in cases where a tribe demonstrates that moderate or medium income tribal members would otherwise be substantially precluded from purchasing homes on the reservation for the reasons discussed above.

Indian country understands, all too well, that funding for Federal programs, including Indian programs, is expected to continue to decline in the coming years. However, because title VII would potentially allow hundreds of tribes and villages which are currently served under umbrella Indian housing authorities (in Alaska) to receive their own block grant the funding, existing tribal housing funds could be significantly depleted. Although the legislation includes some nice provisions which will expand the section 184 loan guarantee program and create a new loan guarantee program under section 771, it has been our past experience that the private lending market has been extremely timid about entering into such loan agreements, even though they are federally guaranteed. I have been told that, although many tribes have completed the section 184 requirements, there have been only about one dozen loans issued through the program. I agree that once private banks begin to participate in these programs that many tribes will be able to leverage their block grant funds to create additional housing money. However, until that point is reached, I would caution the Congress not to rely upon such loan programs to significantly supplement the needed funding. Accordingly, I strongly urge the Conferees to set the block grant authorization at $900 million for each of the relevant fiscal years. Of course, if the loan programs are more successful than they have been in the past, and I hope they are, Congress can adjust the appropriations levels accordingly.

With the recommended changes herein, I endorse this bill and urge its enactment, and I commend the members of the House and Senate who have shown support for the housing needs of Indian people.

WASHOE TRIBE OF NEVADA AND CALIFORNIA
Gardnerville, NV, August 9, 1996

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: I understand that the staff for House and Senate Conferees are currently meeting to resolve differences between the Senate and House versions of H.R. 2406, the United States Housing Act of 1996. I appreciated the opportunity to provide testimony before the joint hearing held by the Committees on Indian Affairs and Banking, Housing and Urban Affairs on Title VII of H.R. 2406, the Native American Housing Assistance and Self-Determination Act. I would like to take this opportunity to respond to your supplemental questions regarding that testimony.

Question 1. Is title VII consistent with the Federal policy of tribal self-determination and self-governance in consolidating all HUD-related funds into a single block grant to an Indian tribe, or its designee?

Answer 1. Title VII clarifies that Indian housing is a function of the government-to-government relationship between Indian tribes and the U.S. Government and that it is based upon the trust responsibility the United States owe to Indian tribes. The title provides a direct role for tribal governments and provides tribes with much greater local control over their tribal housing program. This is intended to enable tribes to provide better and more efficient housing on Indian reservations, enable long-term local housing planning, and allow for more flexible use of housing moneys. Conceptually, this is a reaffirmation of the policy of self-determination and self-governance. If title VII is established in the true spirit of the policy of self-determination and self-governance, tribal governments should be able to operate the programs as tribes currently operate under Interior's Housing Improvement Program, which the Washoe Tribe has already had great success operating through a self-determination contract. As I stated in my testimony, the tribe believes that certain changes are needed to achieve these goals.

First, an issue which goes straight to the heart of tribal sovereignty, is the impact that section 782 of title VII could have on a tribal government's authority to regulate land use management. This section of title VII proposes to permit 50-year leasehold interest in trust land. I understand that this provision was added to make tribal mortgages more appealing to the secondary market, particularly Fannie Mae. While this may be a worthy objective, the provision needs to be modified in order to preserve a tribal governments ability to manage land use on the reservation. First, the provision should be expressly limited to home sites. I am concerned that if it is not limited, businesses would put excessive pressure on tribes to grant 50-year lease provisions in all lease contracts. The current title VII language apparently intends to do this, but there are some drafting errors. Additionally, it is imperative that the availability of such 50-year leases be subject to tribal law. If a tribal government has determined that in certain circumstances such leaseholds are not in the best interest of the tribe, the tribe should maintain the authority to restrict the leases through tribal ordinances. I would like to see the following words in italic added to the provision: any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, *for the exclusive use of housing development,* with the approval of the Secretary of the Interior, *unless otherwise restricted by tribal law.*

A second issue relates to the practical ability of tribal governments to play a direct role in the implementation of the block grants. In light of the greater flexibility this is an extremely important aspect of the bill. Tribal governments will be able to design a housing plan that works in concert with their overall tribal development plan. Unfortunately, the way title VII is currently drafted, if a tribal government elects to assert its authority and receive the tribal housing block grant, the bill would require the tribal government to effectively waive its sovereign immunity and expose all tribal government assets to tremendous risk. Specifically, section 751(c) would provide the Department of Housing and Urban Development [HUD] with the authority to sue tribal governments to recover any block grant funds with HUD determines were not expended consistently with the tribe's housing plan or with the act. In light of the large sums potentially involved, this provision would expose all of a tribal governments assets and revenue to great risk. If a tribe were sued under this provision, it could jeopardize the ability of a tribal government to provide many basic services, including law enforcement and courts, social services, and health services. This provision will effectively preclude many tribal governments from taking the active role title VII envisions. Certainly, the tribe understands the need for

accountability, however, this need could be satisfied without exposing all tribal assets and tribal government services to such risk.

We believe that the existing Indian Self-Determination and Education Assistance Act [Public Law 93-638, as amended by Public Law 103-413, Public Law 103-437], upon which title VII is modeled, provides an acceptable solution. Through 638 Contracts and Compacts, Indian tribes are successfully able to take over the administration of many Federal programs, much in the same way that a block grant works. These existing self-determination and self-governance programs provide the Departments of the Interior and Health and Human Services with the necessary accountability without requiring a waiver of tribal sovereign immunity and without exposing unrelated tribal assets and revenues at risk. Title I of the Indian Self-Determination Act provides that:

> where the tribe's performance under the contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program. (Section 109).

Equally important, in section 111 of the Indian Self-Determination Act, it is expressly stated that nothing in this act shall be construed as "(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe."

The compliance mechanisms established in section 109 serve the Departments of Interior and Health and Human Services adequately, and they should suffice for the Department of Housing and Urban Development. In fact, title VII also includes a mechanism for the Secretary to terminate, reduce, or limit block grant payments, if the Secretary determines that a block grant recipient has failed to comply with any provision of the title (Section 751(a). The effect of this would enable the Secretary to reduce or eliminate future block grant funds as a means to recover any funds which were not expended in accordance with the act. To be consistent with the Indian Self-Determination and Education Assistance Act, Section 751(c) of Title VII needs to be eliminated. Furthermore, the title VII appeals process for tribal recipients for whom the block grant has been terminated or reduced is unnecessarily cumbersome. Under title VII, a tribe would have to file an action in a U.S. Court of Appeals to appeal an administrative decision. In addition to being unreasonable and contrary to the Indian Self-Determination Act (Section 110 of Title I), this appeals process would be practically unworkable.

Finally, while there are many positive aspects to the block grant concept, it is ultimately dependent upon the block grant formula. The formula must provide tribes with at least an adequate base funding. We understand that the House version is intended to incorporate the existing formulas for operations and modernization funding. We would like to see this expressly included in the title. Additionally, we believe an additional factor should be added to section 742, requiring that the new formula for housing development be adjusted to ensure a base funding for small tribes, which are not currently served by an umbrella housing authority.

Question 2. How much does it cost to construct the average HUD assisted housing unit at the Washoe Tribe? How much of those costs would you attribute to the Davis-Bacon Act requirements?

Answer 2. The most recent cost analysis indicates that the total cost for constructing a 3 bedroom unit on the Washoe Reservation is $81,848. Of this total figure, $67,408 is attributed to construction and materials, and $14,440 is attributed to labor costs. Of course, the labor costs are dictated by the Davis-Bacon Act requirements. However, because of the high prevailing wage rates in the Carson Valley, the Davis-Bacon Act requirements actually reduce our labor costs. For example, pursuant to Schedule of Wage Rates, General Wage Decision Number NV960008, issued by the Secretary of Labor, the Davis-Bacon wage rate are as follows: for Carpenters—$12.00/hr., for Laborers—$8.24, for plumbers/pipefitters—$12.75. The prevailing wage rates for Douglas County, Nevada, on the other hand, are significantly greater: for Carpenters—$25.95; for Laborers between $16.21 and $22.77; for plumbers $29.35.

We understand that for many tribes the Davis-Bacon Act requirements substantially increase labor costs for the construction of HUD units. Therefore, we believe that tribes should be able to apply to the Secretary for a waiver of the Davis-Bacon

Act requirements, and such waivers should be granted if the requirements would increase the costs and interfere with the tribe to provide housing for tribal members.

Again, I would like to thank you for your attention to this legislation and your support of Indian housing. With a few minor changes, title VII would provide Indian tribal governments with the ability to take an active role in meeting the housing needs of their members and provide the flexibility necessary to make the most efficient use of federal housing assistance in these efforts. Please feel free to contact me if you have additional questions regarding these supplemental answers or if any additional information is needed.

Sincerely,

A. BRIAN WALLACE, *Chairman.*

PREPARED STATEMENT OF JOYCE DUGAN, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS

Good morning Chairman D'Amato, Chairman McCain, Senator Faircloth and the other distinguished members of the Committee on Banking, Housing and Urban Affairs, and the Committee on Indian Affairs. My name is Joyce Dugan and I am the Principal Chief of the Eastern Band of Cherokee Indians. I have here with me today to help answer questions Sheila Ellingberg, who is one of the staff for our Housing Authority and Tim Seward, an attorney with George Waters' firm who represents our tribe in Washington, DC. I would like to thank you for taking the time to hold a hearing on the issue of reservation housing that is of paramount importance to all Indian tribes. I am especially pleased to have an opportunity to present the views of the Eastern Band of Cherokee Indians and our housing authority, Qualla Housing. I take pride in offering support for housing legislation that, for the first time, recognizes the government-to-government nature of Federal Indian relations.

The Eastern Band is located on what is sometimes referred to as the Qualla Boundary Reservation in western North Carolina. Our reservation is adjacent to the Great Smoky Mountains National Park and covers an area of over 56,000 acres. Our housing authority currently operates 1,007 rental units and homes, and we operate a Housing and Urban Development [HUD] voucher program with 80 units. Although the tribe is having some success operating our housing authority, we still have a terrible unmet housing need on our reservation. Currently we have 804 families on the waiting list for homes. These are families that meet the current poverty requirements, and are living in either substandard housing on the reservation or they are living with extended family members in terribly overcrowded circumstances.

Qualla Housing has worked for 20 long years to establish a successful housing authority on our reservation. I am extremely concerned that nothing be done to put that progress in peril. I understand that all public housing is going to be changed and that this will require significant changes for the Indian housing program. Title VII accomplishes some goals which we have long sought, especially the separation of Indian housing from other public housing and it focuses the Indian housing program on the government-to-government relationship where it ought to be. For these reasons, we would hope title VII would be enacted with some modifications. To the extent that this legislation will provide tribes and tribal housing authorities with greater flexibility and less Federal redtape it is certainly worthwhile; however, there are certain amendments which we like to see made to title VII.

As I mentioned above, one of the cornerstones of title VII is its clear intent to base the Indian Housing program on the government-to-government relationship that exists between the United States and federally recognized Indian tribes. However the definition of the term Indian tribe in title VII includes certain State-recognized Indian tribes which do not have a government-to-government relationship with the Federal Government. Specifically, subpart (B) of the part 6 definition of Indian tribe in section 703 includes "any tribe, band, nation, pueblo, village or community that (i) has been recognized as an Indian tribe by any State; and (ii) for which an Indian housing authority is eligible, on the date of the enactment of this title, to enter into a contract with the Secretary pursuant to the United States Housing Act of 1937."

This inclusion of non-federally recognized Indian tribes in the definition of tribes is inappropriate. This is no matter of mere semantics. Federally recognized Indian tribes are recognized by the United States as governing entities. The sovereign status of federally recognized tribes is inherent but is affirmed by the Indian Commerce Clause of the United States Constitution, numerous treaties signed between tribes and the United States, many Supreme Court cases, and numerous Congressional Acts. Moreover, the inclusion of nonfederally recognized tribes in the Indian

housing program may create some constitutional problems. As indicated by the landmark Supreme Court decision in *Morton* v. *Mancari,* Federal laws and programs that target service to Indian tribes are constitutional because such laws are based on the political and governmental status enjoyed by federally recognized Indian tribes, not their racial classification. The definition of Indian tribes needs to be corrected by striking subpart (B) so that it only applies to federally recognized tribes.

I understand that under existing law a handful of non-federally recognized tribes receive Federal Indian housing funds through their State-recognized Indian housing authorities. The definition of Indian tribe in title VII includes this limited group of non-federally recognized tribes by grandfathering these housing authorities into the Native American Housing Assistance and Self-Determination Act of 1996. However, as I will explain further, we have learned that the inclusion of these non-federally recognized tribes in the Federal Indian housing programs was the product of an inadvertent loophole in the existing law. Because the new Act correctly focuses on Indian tribal governments, and not just housing authorities, this past loophole should be corrected. Just as the Indian Self-Determination and Education Assistance Act (Public Law 93–638 as amended by Public Law 103–413, Public Law 103–435, and Public Law 103–437) only applies to federally recognized Indian tribes, so should the Housing Assistance Self-Determination Act. However, before moving on, I want to expressly clarify that federally recognized Indian tribes that currently receive Indian housing funds through a State authorized IHA should continue to have equal access under new Native American Housing Assistance and Self-Determination Act, because they do have a government-to-government relationship with the Federal government.

Pursuant to recent discussions with the regional HUD office, our understanding of the history of this loophole is that over the course of time, certain State-recognized tribes established State authorized Indian housing authorities. Upon a showing that the communities they serve do not receive any Federal assistance through other State housing authorities, these housing authorities somehow began to receive Indian housing funds. Because they do not have a federally recognized tribal government, their housing needs are really the responsibility of the State government. If the State in which these communities are located recognizes these communities as having governments, the State may provide housing funds directly to their housing authority.

Proposed Solution: We believe the most appropriate way to address this concern is to simply strike subpart(b) of the definition of Indian tribe. If Congress is unwilling to correct the past mistake and limit access to the Native American Housing Assistance and Self-Determination Act to just federally recognized tribes, there may be a way to alter the definition of the term "block grant recipient" (part 10 of section 703) to refer to federally recognized tribes or their tribally designated housing entity and to grandfathered IHAs of non-federally recognized tribes which existed as of January 1, 1996. Such language would require numerous conforming amendments, including an amendment to the allocation formula criteria (Section 742). Under existing law, the IHAs servicing the non-federally recognized tribes do not have access to Housing programs that are only available to federally recognized tribal governments, such as the HOME program. At the least the funding levels of these grandfathered IHAs should be limited to their existing levels.

As part of the effort to refocus the Indian Housing program on the relationship tribal governments have with the Federal government, the Native American Housing Assistance and Self-Determination Act of 1996 expressly refers to the trust responsibility owed by the United States (Section 702 subparts 3–5). This is an extremely important and positive provision because it sets the foundation for the Indian housing program and distinguishes it from welfare assistance. The current title VII language implies the that the provision of affordable and safe housing is a function of the trust responsibility, but this ought to be expressly stated. Pursuant to treaties signed by the United States, Supreme Court precedence, Acts of Congress, and Executive Orders Indian tribes agreed to peacefully turnover their homes and homelands in return for the United States commitment to provide, among other things, safe homes on the remaining reservations. The current housing situation on Indian reservations, where substandard and overcrowded housing conditions are prevalent, demonstrates the sad failure of the United States government to uphold its end of the bargain.

Proposed Solution: Add the following clause to the end of section 702(3) after the term Indian tribes: "including, but not limited to, the provision of safe and affordable housing."

One of the primary goals of this legislation is to free tribal housing authorities from excessive Federal regulation, especially regulation which adds costs to the pro-

gram without producing any tangible results. We heartily endorse this concept. Pursuant to this goal, we believe that title VII should eliminate reference to the Davis-Bacon requirement and to the 5 year plan. These are two enormously burdensome Federal requirements that would add substantially to the cost of tribal housing and limit our productivity without adding any identifiable benefit.

Davis-Bacon——

I understand the political realities regarding the imposition of Davis-Bacon wage rates. However, I want to be sure that you understand the real world reality of its application in Indian country. Our housing authority has informed me that the Davis-Bacon requirement currently adds $15,000 to the cost of the typical new home. It means that a $50,000 home costs $65,000 to build. The Davis-Bacon costs requirements are simply not applicable to the private market wages in our area. This additional cost has two negative impacts. It, of course, adds a substantial cost to the tribal member who is purchasing or renting the home. Second, it diminishes the efficiency of our tribal housing development. This inefficiency will be especially evident under the block grant scenario. As a gentleman from the All Pueblo Council noted earlier this week, we are being forced to pay Cadillac prices for Volkswagens.

Proposed Solution: If it is not politically feasible to entirely delete reference to Davis-Bacon, subpart 3 of section 714(b) should be expanded to outline certain criteria which the Secretary would consider when determining whether the Davis-Bacon requirements should be waived. Where a tribe can demonstrate that the Davis-Bacon requirements would add substantially to the costs of housing and significantly decrease the ability of the tribe to provide housing to families with a demonstrated housing need, the Secretary should be authorized to waive the Davis-Bacon requirements.

Five Year Plans——

There has been a great deal made regarding the need to reduce government redtape and bureaucratic inflexibility. This is clearly one of the driving forces behind the establishment of a block grant program. However, the requirement, in section 712, that tribes develop a detailed 5 year plan is an example of an unreasonable Federal burden or mandate. Title VII would require tribes to conduct surveys and studies similar to the requirements that used to be imposed upon local governments to receive Community Development funds (the Housing Assistance Plans and later the Comprehensive Housing Assistance Strategy Plans). These requirements were too burdensome for local government and they are too burdensome for Indian tribes. Furthermore, its seems particularly unreasonable to require tribes to produce a detailed 5 year plan when the Federal Government will only be providing funding on an annual basis. If the proposed legislation does not contain any 5 year funding commitment on the part of the Federal Government, there is no sense in requiring a detailed 5-year plan from tribes. Certainly, all would agree that tribes should have a general plan for the use of their block grant funds, but this should not be used as a criterion upon which tribal block grant applications will be evaluated.

The 1-year plan, on the other hand, is quite similar to the current applications which Indian Housing Authorities already submit. This process has proven to be workable for both the tribes and for HUD, there is no reason to add a new layer of Federal redtape.

Proposed Solution: Delete subsection (b) of section 712 and all other references to the 5-year plan.

The provision of title VII governing the establishment of the allocation formula (Section 742) is simply too subjective and too undefined. This is an extremely important element for tribes. We have worked for twenty long hard years to create successful housing authorities and we do not want to see the rug pulled from under them. First, it is absolutely imperative that Indian tribes have a major role in the development of the formula. Therefore, there needs to be an express requirement that HUD develop the formula pursuant to negotiated rulemaking procedures. Second, the factors to be considered need to be more concretely defined. For example, subpart (2) currently states that the "extent of poverty and economic distress within Indian areas of the tribe" be considered a factor in developing the formula. This is extremely broad language left to the discretion of HUD. What would qualify as economic distress? We would like to see these terms more fully defined. Additionally, we are concerned that, under the broad discretion currently permitted in the formula, one factor, for instance tribal population, could overwhelm all other factors in determining allocations. Finally, we have heard that it is the intent of HUD to fund the tribal block grants through three formula streams: an operation formula, a modernization formula, and a new development formula. We have been told that HUD intends to continue using the existing operation and modernization formulas, and that the only new formula that will be established under section 742 will be

the development formula. As this is the intent of HUD and the drafters of Title VII, we would like to see this expressly stated in the legislation.

Proposed Solution: Expressly specify, in section 742, that the block grant will be the total of the following three separate funding formulas: the existing operation and modernization funding formula, and a newly established new development funding formula.

In closing, I wish to express my strong support for the bill and with these changes made to the legislation, we endorse it and urge its enactment.

THE EASTERN BAND OF CHEROKEE INDIANS
Cherokee, NC, July 17, 1996.

Hon. CONNIE MACK,
Committee on Banking, Housing,
U.S. Senate, Washington, DC.

DEAR SENATOR MACK: Thank you for taking the time to review my testimony of June 20, 1996 at your Committee's Hearing on Title VII, Native American Housing Assistance, of H.R. 2406. In response to your questions regarding some of the statements contained in this testimony, I am providing comments and answers based on the Eastern Band of Cherokee Indians' perspective of this proposed Indian housing legislation.

Local Housing Plan

Question 1. What aspects of the plan do you think are essential to retain in the law and what could be eliminated or left up to the rulemaking process?

Answer 1. First of all, the requirement that tribes/IHAs must submit a 5-year plan is not appropriate. If funds are going to be allocated based on a year to year model, then what is the purpose of a 5-year plan? If HUD is asking for a long-range overview of what the tribe/IHA intends to accomplish/achieve over a 5-year period, then that plan could be addressed in this local plan as a "hope to accomplish" proposal; however, HUD must keep in mind that due to the changing economy, environment, and other factors that can affect housing, these long-range plans may have to be amended or perhaps completed revised at any time during this 5-year timeframe. Our IHA also believes this 5-year plan is a subjective type of proposal which cannot be measured or evaluated adequately.

The types of information and data that the legislation proposes to have included in the 1-year plan is appropriate and not too burdensome in our estimation. It appears to be the types of information our IHA currently provides as part of any/all funding applications for which we have applied in the past on a competitive basis. This information can be provided on an annual basis since it is a matter of updating the information provided from the previous year. In regards to the various certifications that will be required of IHAs in this 1-year plan, this does not appear to be unrealistic since most of those are ones we have been required to submit in the past as part of competitive funding applications.

Funding Allocation Formula

Question 1. What specific criteria would you add to the formula factors that are not already contained in the legislation to ensure a fair and equitable distribution of Federal funds for Indian housing?

Answer 1. First of all, the allocation formula [Sec. 742] provision of the legislation should be more clearly defined. In the current provision, it is simply too subjective and not well defined. There are too many factors currently being considered as part of the allocation formula that will be left up to HUD for final determination. This is not acceptable to our Tribe/IHA. Our IHA has been informed at the various meetings held over the past few months regarding this legislation that HUD is proposing to fund the block grants using three formula steams: an operation formula, a modernization formula, and a new development formula. If this is in fact what HUD is proposing, then our Tribe/IHA wants to see how these formula factors are to be rated from tribe to tribe, considering the population variances among the tribes. Under the broad discretion currently permitted in the formula, tribal population could overwhelm all other factors in determining allocations. This should be given further thought as the final formula allocation is being developed.

Question 2. Do you think the process of negotiated rulemaking is a useful mechanism for developing a formula? If not, what method would you recommend?

Answer 2. Yes; the Eastern Band of Cherokee Indians and Qualla Housing Authority, our IHA, strongly believe that this all important formula for allocating In-

dian Block Grant funds should be developed pursuant to negotiated rulemaking. In fact, our Tribe as a member of the United Southern and Eastern Tribes [USET] organization, has gone on record with HUD in requiring that there be representatives of tribes and IHA representatives involved in the development of the allocation formula.

Adequate Safeguards/Sufficient Flexibility

Question 3. Do you believe that there are adequate safeguards in this legislation to protect the Federal interest, while still providing sufficient flexibility for local initiatives and community-based decisionmaking?

Answer 3. Yes; for the most part. One of the major concerns our IHA has is in getting adequate and correct, complete information from HUD as we venture into this block grant program for Indian housing. It appears there are still many unanswered questions with regards to the procedures under which HUD will oversee the daily operation of this block grant program. However, at the same time, our tribe/IHA as a grant recipient, does not want to be placed in a situation where HUD is making all the decisions. Flexibility for the tribes and IHAs to meet their local initiatives is essential in making this legislation work for the benefit of the tribes, tribal members, as well as the Federal Government.

Once again, on behalf of the Eastern Band of Cherokee Indians, let me express our appreciation for your interest in obtaining our views and opinions regarding this most important housing legislation that will have a direct impact on our tribal members.

Sincerely,

JOYCE C. DUGAN, *Principal Chief.*

THE EASTERN BAND OF CHEROKEE INDIANS
Cherokee, NC, July 17, 1996.

Hon. ALFONSE D'AMATO,
Committee on Banking, Housing,
U.S. Senate, Washington, DC.

DEAR SENATOR D'AMATO: Thank you for taking the time to review my testimony of June 20, 1996 at your committee's hearing on Title VII, Native American Housing Assistance, of H.R. 2406. In response to your questions regarding some of the statements contained in this testimony, I am providing comments and answers based on the Eastern Band of Cherokee Indians' perspective of this proposed Indian housing legislation.

Housing Management Plan

Question 1. In your opinion at a minimum what should be contained in the housing management plan?

Answer 1. A detailed 5-year plan as proposed in H.R. 2406 is not realistic as we mentioned in our testimony. It would require a tremendous amount of research, exhaustive study, as well as unnecessary costs to develop this plan when funding is going to be provided on only a year-to-year basis. The Public Housing Agency Plan as described in the Senate's version of this proposed legislation seems much more reasonable and logical. This Plan appears to cover the major areas that should be included in a housing management plan submitted by an Indian tribe seeking block grant funds on an annual basis. In fact, the eight (8) items defined and described in the S.B. 1260, Section 5A. Public Housing Agency Plan (b) Contents, are those items of information and documentation our Tribe and Housing Authority would consider appropriate and essential for inclusion into a housing management plan to be submitted on an annual basis as part of the block grant application process. The information that would be provided via these eight (8) areas is similar to the information our Housing Authority is required to provide to HUD and/or other funding sources to whom we apply, in our past as well as current funding programs. This information is detailed, yet not burdensome nor speculative which we believe would be the case should IHAs be required to prepare documentation and justification for a 5-year plan as H.R. 2406 currently proposes.

HUD's Oversight Authority

Question 2. In your opinion, are the provisions contained in the legislation sufficient to ensure that the Department maintains a limited, but responsible oversight authority?

Answer 2. Yes; for the most part; however, a stronger emphasis should be placed in the legislation stressing this—HUD historically has crossed over into areas of oversight and review that are clearly not their responsibility. Our Tribe and Housing Authority are in total agreement with your opinion of HUD's oversight authority focusing on performance review via an objectively defined monitoring process.

Eligibility of Tribes/IHAs-Proposed Formulas for Block Grants

Question 3. In your opinion, is it wise to eliminate the eligibility of tribes and IHAs for these programs and spread their funding across the entire universe of tribes and IHAs based on a formula?

Answer 3. No; our tribe does not want to see the competitive programs eliminated which is what this legislation would do. This is one of the major reasons the Eastern Band of Cherokee Indians and our housing authority, Qualla Housing Authority, strongly opposed the introduction of this legislation initially. Qualla has always done well in these competitive funding programs because of their track record and experience as one of the older established IHAs. Our concern when you open this block grant funding up to any/all tribes and IHAs is that you allow everyone [ie. all tribes and IHAs] to receive funding regardless of their track record or lack of a track record and experience in housing production/management. One could question whether or not this is the best use of Federal funds should the result be no measurable production of much-needed housing for the Native Americans for whom this legislation is intended to assist.

In my testimony before your committee, I expressly stated my tribe's opposition to allowing non-federally recognized Indian tribes the right to participate in this Native American Housing Assistance and Self-Determination Act. My tribal governing body still believes that the inclusion of non-federally recognized tribes into the Indian housing program may create some constitutional problems as referenced in my comments contained in Section 1. Definition of Indian tribe, of my testimony. We would urge your committee to closely evaluate the current definition of Indian tribes as stated in this proposed legislation, and consider correcting it by striking subpart (B) of Part 6 Definition in Section 704 of H.R. 2406. By allowing other non-federally recognized—tribes to participate in this housing block grant program, means the funds available to federally recognized tribes with a proven track record in housing development and—management, gets less and less.

In regards to the allocation formula which will determine the amount of funds available to each eligible Tribe/IHA, as stated in my testimony, the current provision in H.R. 2406 governing the establishment of this formula, is too subjective and too undefined. We would strongly urge your committee to require that HUD allow tribal representation and input in developing this allocation formula. Those IHAs such as ours who have worked extremely hard over the past two decades to provide housing to our tribal members using the current HUD programs, do not want to be left out of future funding consideration. In fact, our tribe believes the expertise of these experienced IHAs can be very useful to HUD in developing an objective, clearly defined allocation formula. Specifically, the factors to be considered in determining an equitable allocation formula must be expressly and objectively defined. Our proposal for an allocation formula would be to specify in Section 742 of H.R. 2406 that the block grant will be the total of the following three separate funding formulas: the existing operation formula, the modernization funding formula, and a new development funding formula.

Loan Guarantee Program

Question 4a. What assurances do we have that the Department will institute adequate safeguards protecting Federal taxpayers from exposure to liability based on questionable loan practices?

Answer 4a. Qualla Housing Authority, the IHA representing the Eastern Band of Cherokee Indians, advised me that very little discussion has taken place in the meetings that have been held over the past 6–7 months with HUD and Congressional staff regarding this loan guarantee program. It appears that this ability/authority so granted to IHAs to use their grant allocation(s) to issue notes and/or pledge as collateral for notes and obligations has not been thoroughly defined and explained in sufficient detail. Our tribe and IHA would be very hesitant to utilize our block grant funds in this manner without first thoroughly understanding what HUD's regulations are in interpreting this provision. Once again, this appears to be an area of the legislation that would be vulnerable to misuse or abuse by—perhaps many tribes, and especially inexperienced tribes and/or IHAs who could legitimately profess that HUD had not given adequate explanation or interpretation to this loan guarantee provision. Therefore, in response to your question, we believe that HUD

has not given adequate thought to the development of these safeguards that would protect—taxpayers from exposure to liability. Strict regulations and controls regarding this loan guarantee provision should be developed prior to the final enactment of this legislation.

Question 4b. Do you believe it is wise policy to allow grantees the authority to pledge funds currently earmarked as operating subsidies for the maintenance and upkeep of existing Indian housing dwelling units as collateral for loans of unknown risk?

Answer 4b. No; neither my tribe nor the IHA is interested in jeopardizing those funds earmarked as operating subsidies for existing units in order to develop new, innovative programs that are risky. Perhaps one of the main concerns we initially had with this block grant funding concept, and in fact still have with this funding concept, is that those IHAs such as ours that have a sizable number of existing units, currently have a large operating budget for the maintenance of these units. In order to continue funding the maintenance of these existing units, Qualla must always set aside funds first for this purpose; and then use the remaining block grant funds to develop new housing opportunities, which means that the development of new housing opportunities will be limited. However, we will maintain our fiscal responsibility and not jeopardize existing units that it has taken years to provide by making risky deals.

Administrative Fees Cap

Question 5. In your opinion, would the addition of a cap on administrative fees improve the legislation?

Answer 5. Perhaps consideration should be given to a cap based on a percentage of the block grant funds each tribe/IHA receives. However, my tribe and the IHA's concern on placing a cap on the administrative fees would be that those experienced IHAs who have been successful in developing a broad range of programs might require more administrative funds than the percentage cap would allow, and it would result in being able to provide fewer services to the existing programs as well as proposed programs for housing development/management for their tribe. The other argument for placing a cap on the administrative fees could be made in regards to new tribes or new IHAs or even existing tribes/IHAs who have yet to produce an inventory of housing units. These grantees should not be allowed to expend unreasonable amounts of their block grants for administrative purposes without producing a sufficient number of housing units. Hopefully, these tribes/IHAs will be tested when HUD evaluates and reviews their housing management plan which must state the types and numbers of units the tribe/IHA intends to develop over the 1-year or 5-year period, whichever timeframe the legislation ends up requiring in the plan. Perhaps this is another reason to require tribes/IHAs to prepare this housing management plan based on a year-to year rather than on a 5-year plan. Closer, more stringent oversight must be put in place in order to avoid potential problems such as this one.

Protection of Operating Subsidies/Modernization Funding

Question 6. In your opinion, does the legislation adequately protect operating subsidies and modernization funding for existing Indian housing units?

Answer 6. No; it does not appear that this legislation protects existing Indian housing units. A more detailed explanation of this question also relates to Answer 4(b) provided to your Question 4(b). Once again, given limited funding available under a lump sum allocation as the block grant program will be, the tribe/IHA must be fiscally responsible and cognizant of the priority to continue the funding of the operational and modernization needs their existing units. However, at the same time, this will obviously reduce the amount of funds available to develop much-needed new housing inventory.

Leveraging Private Investments Via Pledging Block Grant Funds

Question 7a. Would you agree that this provision should be modified to protect operating and modernization funds that are intended to provide continued affordability and proper upkeep of existing Indian housing units currently assisted under the 1937 Housing Act?

Answer 7a. Yes; since it will be the tribe's [IHA's] decision as to the amount of funds from the Block Grant they will need to continue the operation of their existing units including the modernization of these units from year to year, our Tribe feels it is in the best interest of all tribes that this provision of the legislation be amended to require that tribes/IHAs cannot use the funds earmarked for these specific purposes as a "pledge" toward repayment of notes/loans obtained via private invest-

ment leveraging. The funds necessary to continue the existing programs of the IHAs should not be allowed to be used as collateral for this purpose.

Question 7b. Are there any other safeguards you can suggest for improving this provision?

Answer 7b. Our Tribe/IHA would suggest that a percentage cap be placed on the total amount of Block Grant funds received by a tribe/IHA that can be used for the purpose of obtaining—additional funds from private investments (via pledging these funds as collateral). This would ensure that should a tribe/IHA "default" on repayment of notes/loans obtained from private investments, that not all of these block grant funds would be lost. Obviously, it would be in the best interest of the tribes/IHAs not to pledge the funds they need for administrative purposes nor those earmarked for operating subsidies and modernization efforts of existing units. If these funds should be lost due to a bad investment, the tribe/IHA would have no other resources to which they could turn.

Once again, on behalf of the Eastern Band of Cherokee Indians, let me express our appreciation for your interest in obtaining our views and opinions regarding this most important housing legislation that will have a direct impact on our tribal members.

Sincerely,

JOYCE C. DUGAN, *Principal Chief.*

PREPARED STATEMENT OF CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

The Confederated Tribes of the Umatilla Indian Reservation would like to thank you for asking for tribal input in developing the Native American Housing Assistance and Self-Determination Act. The Confederated Tribes of the Umatilla Indian Reservation's governing body, the Board of Trustees, reviewed and adopted a resolution supporting the separation from the Public Housing Act. Therefore, we are very pleased to see a separate bill.

The Cayuse, Umatilla, and Walla Walla Treaty Tribes signed one of the 1855 Walla Walla Treaties Our Treaty with the U.S. Government established the Confederated Tribes of the Umatilla Indian Reservation located in eastern Oregon. This treaty reserved our sovereign rights and established a government-to-government relationship between our two countries, which we honor and respect.

The Confederated Tribes of the Umatilla Indian Reservation is very pleased that Congress is proposing a change in the government's approach to meet Indian Housing needs The Public Housing Act of 1937 was the first step Separating the Indian housing needs and establishing the Native American Housing Assistance and Self-Determination Act of 1996 is supported by the Confederated Tribes of the Umatilla Indian Reservation. The Confederated Tribes of the Umatilla Indian Reservation established the Umatilla Reservation Housing Authority in 1966. The tribe did not have adequate housing then and we are still trying to reach the goal of having adequate homes. Today the Umatilla Indian Reservation Housing Authority has a list of 186 people asking for homes the tribe is aware a number of tribal members have not signed up for tribal homes because of the current Federal regulations and the current waiting list is already too long.

In the past the tribe had to rely on HUD development grants as the only source of producing hornes on the Reservation. Which has never been adequate. Over the years the number of units needed has increased while the funding have been reduced. HUD programs have low-Income units that have filled some of the tribal needs but have never realiy filled all our housing needs The low-income standard was not the best standard for tribal members. Some of our tribal members do not meet or exceed the low income standard. Therefore, did not qualify for HUD development grants.

In 1994, the Umatilla Reservation Housing Authority realized that the current programs would not meet our tribal housing needs. The opportunities by program restructuring was a source that needed to become available.

In the past few years the Confederated Tribes of the Umatilla Indian Reservation has started developing economic programs such as Wildhorse Casino, Wildhorse Hotel, RV Park and Golf Course. We have seen an increase in tribal employment and tribal homes. Tribal members have to travel up to 60 miles to get to work because they have not been able to find or build homes on the reservation.

The current Umatilla Reservation Housing Authority has adopted a mission statement to improve the partnership with the Tribes Board of Trustees to provide the best affordable, client preferred housing units possible for tribal members of all income levels. The Board of Trustees and Umatilla Reservation Housing Authority

have reviewed a 5-year plan that has been adopted by Umatilla Reservation Housing Authority for improving standards, rehabilitation, services, operations and development for our 1,900 tribal members. The 5-year plan has also been expanded to cover a reservation wide approach.

The Native American Housing Assistance and Self-Determination Act of 1996 would support a new approach that is consistent with the approach that the Umatilla Reservation Housing Authority has adopted. The Confederated Tribes of the Umatilla Indian Reservation believe that; 1) the United States work with the tribes as a sovereign nation; 2) block grants be given to the tribes; 3) Davis-Bacon wage requirements be removed from the act; 4) flexibility be given to tribes to address the tribal housing; 5) that an appropriate budget of $900 million be given to implement and 6) a transition period be given to make the necessary changes from the Public Housing Act to the Native American Housing Assistance and Self-Determination Act of 1996.

PREPARED STATEMENT OF JAMES LAWRENCE JOSEPH, CHAIRMAN, SAUK-SUIATTLE INDIAN TRIBE

My name is James Lawrence Joseph and I am the chairperson of the Sauk-Suiattle Tribe. We are located in a rural community in Northwest Washington State. I offer my testimony on the effects of Federal welfare reform in Indian country so that the Senate Indian Affairs Committee can obtain a realistic view of how we as a sovereign people will be impacted, and to emphasize that full participation of tribal governments in the welfare reform process is needed to address tribal concerns.

The Sauk-Suiattle Tribe is democratically controlled by an elected Tribal Council. Though our ancestors were signatories to the 1855 Treaty of Point Elliott we did not become federally recognized until 1975. In 1982 a reservation of 23 acres was established near our ancestral area of the Sauk prairie.

Though we are categorized as a "small and needy" tribe by the Bureau of Indian Affair's guidelines, we continue to meet our 250 tribal members' most basic needs. Presently we provide social, educational and related medical services to our tribal members (and other Native Americans in our service unit), including housing for 19 families.

Our Tribal Court is administered by the Tribe in conjunction with contract services provided by Northwest Inter-Tribal Court Systems. Our court predominantly presides over criminal matters, Indian Child Welfare, housing, Youth and Family codes, civil ordinances, et cetera.

The tribe is the major employer of our people. Fishing, woodcutting and foraging remain seasonal employment activities for some members of our tribe. Unfortunately, the commercial fishing season has been severely limited for the last 2 years; therefore, tribal members have been unable to rely on this activity as a stable means of support.

The Tribe administers several programs that receive all or most of their funding from the Federal Government. A small portion of the Federal funds are passed to us through the State. Those Federal funding programs are now at risk of being eliminated, severely cut back, or transferred to the State. Below is a general overview of how such changes will affect our tribal programs and people.

Education is the top priority of our tribe. It serves as a foundation for future economic and social self-sufficiency. Our Education Department consists of seven programs. They are as follows: Higher Education, Adult Vocational Education Training [AVET], Adult Basic Education [ABE], Johnson O'Malley [JOM], Library, Jobs Opportunity and Basic Skills [JOBS], and the Job Training Partnership Act [JTPA] administered by the Western Washington Indian Employment and Training Program.

Each of these programs are funded in whole or in part under such Federal programs as: Job Training Partnership Act [JTPA], JOBS program, Library Services and Construction Act, Vocational Rehabilitation Act, and the Vocational Educational Act.

This department serves the community in four areas: Indian Child Welfare, Day Care, Early Childhood Education and Assistance Program (ECEAP), and the Tribal Mental Health Training Program.

Each of these programs are funded in whole or in part under such Federal programs as Child Care and Development Block Grant; Family Preservation and Support Services; Child Welfare Services and numerous State programs which relieve matching funds from the Federal Government.

The tribe administers two food programs, directed mainly at serving elders and children, that prepare and deliver food to the tribal community. These daily meals

are often the only nutritional and well-balanced meal they relieve as part of their overall diet. The two programs are the Elders Food Program and the Child Nutrition Program. The funding for these programs are shared between various Federal and State programs for nutrition and health, such as the School Lunch Program and the Summer Youth Feeding Program and Child Nutrition.

Social and Health Services Department Except for a small Emergency Food Voucher grant from the State Department of Community Development, this department is entirely funded by Department of Health and Human Services Indian Heath Services. This program includes Equity Health, Mental Health, Alcohol Substance Abuse and Prevention, and Cooperative Rehabilitation services including aftercare counseling. We also assist with coordination of the USDA Commodity Foods and the Low Income Home Energy Assistance Program administered by the Small Tribes Organization of Western Washington. Other Federal Funding. The tribe also receives limited funding from the following Federal programs: Low Income Home Energy Assistance program, and various Housing and Urban Development [HUD] Community Development Block Grants.

Impact We believe the House welfare reform proposal is in direct conflict with the principles of self-determination and the right of tribes to control and operate Federal programs. Tribes, like the States, should be allowed to participate and dictate what is needed for the development of their communities. Tribal participation in the welfare reform process ensures the trust relationship and the long-standing principle of a government to government relationship with the Federal Government.

As the above overview suggests, under current proposals, we will either lose critical funding altogether or suffer substantial decreases in already limited and scarce funds crucial to the welfare of our community. Or, we will be forced to compete with State agencies/communities for funding allocations in political forums that have traditionally been hostile to tribal sovereignty.

In addition, we are deeply concerned about how the present scheme to shift from Federal/State partnerships to the State block-grant approach will affect particular programs such as Family Support [AFDC, child support enforcement program, at risk child care grants], Supplemental Security Income [SSI], and housing assistance. Many of our members receive these public entitlements. Imposition of mandatory work programs, coupled with the loss of the federally administered JOBS program will severely impact our members who have very limited employment and economic opportunities in our community.

Like most Native communities, we are dealing with serious health care issues and an alarmingly high incidence of poverty and unemployment. Understandably we are concerned about our lack of necessary program reserves and funding to meet basic needs of tribal members if they are unable to go from welfare to work as presently planned.

Therefore, in order to meet the needs of our people in the present mood of welfare reform, we strongly urge the Senate to support the following provisions:

1. Direct Federal funding to tribal governments to address the elimination of the longstanding requirement for States to match Federal moneys for assistance to poor people; 2. Tribal participation in the welfare reform process to ensure government to government negotiations to determine tribal needs and to protect tribal sovereignty; 3. Flexibility in the design of tribal programs between Federal and State governments. This would include direct communication and consultation with tribal governments, consortia, and inter-tribal committees or commissions, even if a tribe declined to assume full administrative control over a particular program. Tribal-State consultation in programs declined by the tribes is a key component to successful welfare reform; 5. All job training, education, and job creation programs should be available to or apply to Indian tribes.

Certainly, I speak only for the Sauk-Suiattle Tribe and my comments are directed at only a fraction of the havoc I believe will occur if the present welfare reform package is unleashed into our tribal community. As a tribal community and equal partner we want to work together with those involved in welfare reform to reach long-term solutions that benefit everyone. We look forward to your cooperation and efforts on behalf of Indian people. Thank you for your time and concern in this most critical matter affecting tribal communities.

PREPARED STATEMENT OF JOEL R. THOMPSON, EXECUTIVE DIRECTOR, HOUSING AUTHORITY, CHEROKEE NATION

Chairmen McCain and D'Amato, and members of this joint hearing, thank you for this opportunity to provide testimony regarding the Native American Housing Assistance and Self-Determination Act of 1996, Title VII of the U.S. Housing Act of

1996, H.R. 2406. I appreciate the chance to discuss this important legislation which offers dynamic, valuable reforms that will enhance and improve Indian housing programs. I also want to thank the staff members of each committee who have worked hard on understanding and adopting this legislation.

My name is Joel R. Thompson, and I am a member of the Cherokee Nation of Oklahoma, located in 14 counties of northeastern Oklahoma with our Capitol at Tahlequah. I am the Executive Director of the Housing Authority of the Cherokee Nation with over 4,300 housing units under management in the Low Rent, Section 8 and Mutual Help Homeownership Opportunity Program administered by the U.S. Department of Housing and Urban Development (HUD). I also am currently serving as Chairman of the Board of Directors of AMERIND Risk Management Corporation, the self-funded insurance pool which provides coverage for more than 70,000 housing units throughout Indian Country.

The Housing Authority of the Cherokee Nation was organized pursuant to a State statute permitting the creation of Indian Housing Authorities in Oklahoma. However, our local governing body is the Cherokee Nation and members of our Board of Commissioners are appointed by our Principal Chief Joe Byrd. Each Commissioner's appointment is then approved by our 15 member Tribal Council. Our mission is to provide decent, safe and affordable housing and homeownership opportunities for our tribal members now numbering over 170,000. Many of the more than 80,000 tribal members, residing within the 14 county jurisdictional service area of the Cherokee Nation, live at or below the poverty level and in conditions considerably more severe than those of the non-Indian populations.

The Housing Authority of the Cherokee Nation is a prime example of an IHA which has grown not only in size but also in sophistication over the years. Our annual budget has grown from $8 million to $30 million and our work force has increased from 65 to 250 employees. We successfully leverage Federal programs available for housing and other assistance to Native Americans with whatever other outside financing we can identify. While there may be legitimate complaints about the public housing structures placed on the delivery of housing in Indian Country, we have learned to make those Federal housing programs work for us, for the most part.

We have been and still are good stewards of the public's money. Our tenants accounts receivable for the Low Rent program seldom exceed 2 percent and our Mutual Help average is less than 6.5 percent. In 1990, the Authority accomplished a first. We completely paid off our obligation under the Old Mutual Help Program, thereby assisting 750 Cherokee families in the achievement of homeownership. We presented the HUD Assistant Secretary for Public and Indian Housing with a check for more than $880,000. This advance payment saved the Federal Government an estimated $4 million. At that time no housing authority, public or Indian, had ever accomplished such a feat, but we did. This was only possible with the efficient management of the Housing Authority of the Cherokee Nation and the desire of the families to achieve their dream of owning their homes.

Since that date, more than 550 additional housing units have been developed at the average rate of one every 3 days, with Indian contractors, craftsmen and material suppliers leading the way. These homes were "stick built" as opposed to modular. Believe me, this is no easy feat. It earned the Housing Authority the Department of Housing and Urban Development's recognition for "Sustained Excellence" in the administration of housing programs for the previous 2 years.

The background information above provides a context for my comments on the principal features of the Native American Housing Assistance and Self-Determination Act of 1996, Title VII of H.R. 2406. This innovative legislation will strengthen our efforts to serve our tribal members, and we urge Congress to enact it promptly.

Block Grant Proposal: The idea to bundle all Federal funding for Indian housing programs developed from various roundtable meetings held several years ago by numerous tribal leaders. It is fully consistent with the concept of Indian self-determination and self-governance.

Under section 711 of title VII, one block grant will fund implementation of the Local Housing Plan ("LHP") that must be submitted to HUD for approval. The LHP must include provisions for operation and maintenance of existing Indian housing units, modernization and rehabilitation of existing units, and development of new units. The tribe will have much greater flexibility in how to structure its housing assistance programs and leverage its block grant funding. In short, tribal housing priorities will no longer be frustrated by bureaucratic requirements of public housing programs that were never designed to serve Indian housing needs in the first place.

Tribes will be able to self-determine appropriate Indian housing delivery mechanisms in developing their annual and 5-year LHP missions, goals, objectives and ac-

tivities to meet tribal housing needs. The tribe, not HUD, will identify and prioritize needs, including housing construction and modernization, road improvements, water/sewer improvements, special needs for elderly, disabled or homeless tribal members and other community services needed. Title VII for the first time will allow the use of Federal housing grants for infrastructure-related development, including site improvements and the provision of utilities and utility services.

Initially, any tribe with an existing IHA will satisfy the prerequisite for block grant funding (submission of a Local Housing Plan) if the IHA already has in place a HUD-approved comprehensive plan under the Comprehensive Grant Program or the Comprehensive Improvement Assistance Program. Most existing IHAs already have such HUD-approved plans to which they can add provisions to meet needs identified as part of the new 5-year planning process. Nevertheless, such amendments could be very costly to prepare and submit, even for existing IHAs. For tribes who do not currently have an IHA or other tribally designated housing entity, they will have to incur significant expenses to prepare all of the information required to be included in the plan. Many tribes may not have the financial resources to conduct such surveys and research. The pending proposal offers no direct financial assistance to help defray the costs of such work, but title VII does offer technical assistance funding to help tribes modify their Local Housing Plans to satisfy any additional annual and 5-year planning requirements.

"Recipient" of Block Grant Funding: Currently most Indian housing funding flows to IHAs, although some Federal funds (e.g., HUD's HOME program and the Bureau of Indian Affairs' HIP) flow to tribes. Title VII appropriately allows tribes to determine the recipient of the block grant funds by not mandating an inflexible designation of the tribal entity which will receive block grant funds. Rather, a recipient of block grants can be the tribe or the "tribally designated housing entity" (TDHE). Title VII's definition of TDHE allows a tribe to select its existing IHA as the recipient, or another entity if necessary, to administer and address tribal housing needs. Nevertheless, there seems to be continuing confusion about which tribal entities will be eligible as recipients. Therefore, we suggest some revision of the definitions for "Indian tribe" and "recipient" to clear up the confusion.

Allocation of Block Grant Funds: Section 711(c) of title VII states that the Secretary shall allocate any amounts made available under the act for the fiscal year, in accordance with a formula established pursuant to section 742, among Indian tribes that comply with the act.

Section 742 repeats the reference to block grants "among Indian tribes" and then discusses formula factors that reflect the need of the Indian tribes and their areas for assistance for affordable housing activities, including the number of low income housing dwelling units developed or operated by the existing IHA, the extent of poverty and economic distress in the areas of the tribe, and other objectively measurable conditions. I recommend an amendment to specify that the allocation formula be based on the grant applicant's need and length of its waiting list for housing. Allocations should in no way be made on a pro rata or per tribe basis.

Use of Reserves: A major purpose of H.R. 2406 and title VII is to repeal the 1937 Housing Act, which in turn will dissolve all annual contributions contracts ("ACC"). Section 729 is somewhat ambiguous as to whether it continues to impose ACC obligations on an IHA under title VII, even if a tribe or its IHA wishes to exclude specific housing units from the Local Housing Plan for purposes of block grant funding eligibility. If Section 729 continues AAC obligations, then it seems to frustrate title VII's purpose in repealing the 1937 Act. The same concern arises with section 761 (b) which states that any housing developed or operated pursuant to an ACC shall no longer be subject to the 1937 Act or the ACC or other agreements pursuant to the 1937 Act, "but shall be considered and maintained as affordable housing for purposes of this title." These two sections seem to preserve a continuing contractual relationship with tribes and IHAs after title VII has repealed the underlying statutory basis for the existing contractual requirements, even when a tribe or IHA does not, and has no intention to, execute new contracts or any agreement to assent to the series of new obligations under title VII.

The purported purpose for section 729 is to prevent tribes from diverting to non-housing purposes any reserved funds generated from the management of Indian housing units. However, the HUD review and audit provisions of title VII will catch such efforts, if any, to circumvent the affordable housing purposes of the title. Remember, the impetus for title VII is Native American housing assistance and self-determination. Therefore, tribes and IHAs should be trusted to utilize their housing program funding and reserved funds for housing purposes to meet their urgent housing needs. Accordingly, we recommend that sections 729 and 761 be deleted or substantially revised. As an alternative approach, we suggest amending section 712,

Local Housing Plan, to add a new paragraph (K) to subsection (c) (2) listing another enumerated component of the plan as follows:

"(K) a statement of how any reserve amounts, which are derived from the management of housing units not included in the plan for assistance under this title, will be used to provide affordable housing."

Loan Guarantees under Title VII: The loan guarantee section of title VII, modeled after section 108 of the Community Development Block Grant Program, is very promising. There is no question that Indian Country needs access to additional financing. Title VII recognizes the problem and provides guarantees to assist tribes in obtaining financing if they have been unsuccessful in obtaining financing without a guarantee. Title VII encourages public-private partnerships to leverage Federal funding. For example, the bill establishes a new loan guarantee program in which HUD will guarantee the notes or other obligations issued by an Indian tribe or TDHE to finance affordable housing activities. If a tribe/TDHE has been unable to obtain financing without such a guarantee, HUD can agree to guarantee up to 5 times the amount of the block grant which the tribe will be eligible to receive for affordable housing activities. In general, tribes and IHAs welcome the guarantee concepts embodied in title VII and hope the Senate conferences on title VII will embrace this program.

Amendments to the Section 184 Loan Guarantee Program: This program deserves reauthorization and continued funding. While it initially may have been underutilized during its startup phase, the Section 184 Loan Guarantee Program continues to offer substantial benefit to Indian Country, especially in light of the bill's valuable amendments to the program. Title VII liberalizes the Section 184 Mortgage Loan Guarantee Program to enable tribes (as well as Indian families and IHAs) to receive section 184 guarantees on loans. Furthermore, title VII will substantially increase the aggregate principal amount of all section 184 loans, and the appropriations authorized for each year will increase to $30 million (only $3 million per year has been appropriated to date). In short, title VII's amendments to the section 184 Loan Program take an important step toward—but not across—what is an enormous obstacle to development in Indian Country: access to financing in our local communities.

Although title VII addresses many of the urgent housing issues confronting Indian Country, it does not move as far as it could to help increase credit financing for Native Americans through their local lenders. The answer is legislation along the lines of the bill, S. 486, introduced by Senators Campbell, McCain, Inouye, and Daschle to create the Native American Financial Services Organization. House Resources Committee Chairman Don Young of Alaska has introduced a companion measure, H.R. 2412, in the House.

The Native American Financial Services Organization Act embodies a two-tier approach with the Native American Financial Services Organization or "NAFSO" at the national level providing technical assistance, and Native American Financial Institutions or "NAFIs" at the local level to meet Native communities' needs for housing, infrastructure and economic development. The NAFSO will facilitate greater lending and much needed secondary mortgage market support and access. NAFIs, as private enterprises, can combine, coordinate and leverage assistance now available in programs administered by HUD, Bureau of Indian Affairs and Farmers Home Administration, among others.

NAFSO will help Native American communities to leverage Federal block grant funds to create private fundraising for housing, infrastructure and economic development. Native communities desperately need more bank credit and services. In only some areas do traditional commercial banks venture into lending relationships with Native American tribes and individuals. Common obstacles may be: sovereign immunity issues; inapplicability of traditional commercial codes, creditor's remedies, and mechanisms for perfecting a lien; and unfamiliarity with tribal courts and laws. The special trust or other restricted status of Indian lands and small loan sizes make mortgage lending challenging, time-consuming and unremunerative, according to many traditional financial institutions.

NAFSO will be a one-stop technical assistance organization to help tribes and IHAs, for example, prepare their "Local Housing Plans" required under title VII of H.R. 2406. NAFSO also will assist tribes and IHAs coordinate existing Federal, State, tribal and private programs and funding to finance housing, infrastructure and economic community development in Native American communities. Currently there is no one source of information for tribes, developers, financial institutions, and other potential investors on the lending needs in Indian country.

NAFSO will advise on methods of underwriting, securing, servicing, packaging and selling mortgages and small commercial and consumer loans. NAFSO also will offer specialized assistance on how to overcome barriers to primary mortgage lend-

ing on Indian lands, including issues related to trust lands, discrimination, high operating costs, and inapplicability of standard underwriting criteria.

An especially important role of NAFSO will be to help existing or new financial institutions develop into NAFIs. NAFSO will receive Federal funding but also solicit investments from private investors, including gaming and non-gaming tribes. NAFSO will fund interested applicants to qualify for Federal matching funds to create NAFIs if they can demonstrate (1) a special interest and expertise in serving the primary development and mortgage lending needs of the Native American community it will serve; and (2) endorsement of the Native community.

The two-tier NAFSO/NAFIs strategy will empower Native communities to help themselves by developing locally controlled, financial institutions that will increase access to credit and investment capital. Once NAFIs become well established, they will be self-sustaining and not dependent on future Federal subsidies for on-going viability. NAFIs also will be able to offer loans which can be resold in the secondary mortgage market to the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, commonly known as Fannie Mae and Freddie Mac. If NAFIs can pool and sell their mortgages to these secondary market participants, the NAFIs' funds will be freed up to make additional loans in their Native communities. Without a secondary market willing to purchase Indian mortgages, commercial lenders and even tribes and IHAs have been unable to tie up their funds in mortgage loans to Native families.

Enactment of Title VII of H.R. 2406 and the NAFSO Act, offers a winning approach to create economic opportunity by leveraging existing Federal dollars to generate private investment in Native communities and ultimately reduce their dependency on federally subsidized programs.

I strongly urge you to take action on these much needed legislative proposals, in tandem.

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

I'd like to thank Chairman D'Amato and Chairman McCain for scheduling this hearing on Title VII, Native American Housing Assistance Act, of the bill H.R. 2406, United States Housing Act of 1996. As you know, the Senate did not have a title addressing Native American housing in the public housing bill that passed in January. I commend the Chairmen of the respective committees here for creating the opportunity for tribal leaders and representatives from the National American Indian Housing Council and the National Congress of American Indians to provide their input today along with the distinguished Secretary of HUD, Henry Cisneros.

My gravest concern is that any restructuring of Native American housing policy appropriately reflects the housing needs in Indian country while at the same time promoting tribal sovereignty and self-determination.

Currently, the level of substandard housing in Indian country in Minnesota is 60 percent.

Fifty percent to 70 percent of all Indian households on Minnesota reservations live in Indian Housing Authority (IHA)/HUD assisted housing. Essentially HUD is the major developer for reservation communities. In fact, very few agencies or other developers will provide funding for building on trust lands.

Over 50 percent of the population on many of the Minnesota reservations is under 25 years of age. There are many young families. Tribes are finding more and more of the urban population moving back onto the reservations. Housing needs are increasing rapidly. Overcrowding is a tremendous problem—there are households on Minnesota reservations where 15–25 people are living in 3 bedroom homes.

Right now, the need for development of single family homes is at an all time high. There are currently approximately 93,000 homeless or underhoused Indian people in America.

Title VII addresses both the unique housing needs of Indian country and allows tribes the flexibility, in keeping with their sovereign status, to determine their own housing needs and to develops a plan to meet those needs.

I'm grateful to the Chairmen and the witnesses who have come to this hearing to discuss some of the problems in this legislation and to offer suggestions and comments to improve this important reform measure.

I ask that my statement be included in the record.

PREPARED STATEMENT OF KALI WATSON, CHAIRMAN, HAWAIIAN HOMES COMMISSION, DEPARTMENT OF HAWAIIAN HOME LANDS, HAWAII

Messrs. Chairmen and Members of the U.S. Senate Committee on Indian Affairs and the U.S. Senate Committee on Banking, Housing and Urban Affairs:

I am Kali Watson, Chairman of the Hawaiian Homes Commission, State of Hawaii. Thank you for the opportunity to testify in support of Title VII, Native American Housing Assistance, of H.R. No. 2406, the U.S. Housing Act of 1996.

Recent studies have documented the significant structural, overcrowding, and affordability housing needs existing in Native American communities.

H.R. 2406 acknowledges the Federal Government's trust responsibility to provide safe, decent, and affordable housing for Native Americans. The proposal separates Indian housing programs from public housing programs, thereby creating a structure which will focus on the unique and severe needs of Native Americans.

H.R. 2406 empowers tribes to allocate Federal resources efficiently. Block grant funds are to be used to distribute financial resources and recipients will be determined by federally recognized tribes or the Tribally Designated Housing Entity.

The Department of Housing and Urban Development would continue to approve Local Housing Plans for the operation and maintenance of existing Indian housing units, modernization and rehabilitation of existing units, and development of new units in order to create a flexible environment to manage housing projects. Significantly, public-private partnerships will be encouraged to leverage Federal resources.

The Department of Hawaiian Home Lands, State of Hawaii, is familiar with the Native American housing situation through our participation as a member of the National Commission on Native American, Alaska Native, and Native Hawaiian Housing, created by Congress pursuant to Public Law 101–235, the HUD Reform Act of 1989. Furthermore, as the primary housing delivery agency for Native Hawaiians, we fully appreciate the complex issues involved in planning, developing, financing, and managing land and housing in native communities.

H.R. No. 2406 is consistent with the National Commission's findings and recommendations. The proposed block grant planning and funding mechanism, specifically earmarked for Native Americans, creates a comprehensive and flexible solution to combine Federal resources with native experience and know-how to develop and manage housing projects at the local level. We believe this approach goes a long way to improve the delivery of safe, decent, and affordable housing in a manner consistent with Native American goals and needs.

We respectfully request your favorable consideration of Title VII, Native American Housing Assistance, of H.R. 2406, the U.S. Housing Act of 1996. We appreciate very much the opportunity to provide our comments on this manner.

PREPARED STATEMENT OF EARL OLD PERSON, CHAIRMAN, BLACKFEET INDIAN NATION

Housing is in great need and demand at the Blackfeet Indian Nation in Montana as it is in many Indian Communities across the country. Fortunately, we are very proud to have the Blackfeet National Bank the only tribally owned national bank on an Indian Reservation in the country, serving the 1½ million acre Blackfeet Reservation. It is a tiny bank by most standards, with less than 15 million in deposits, but it is also the axle on which the Reservation economy turns, providing loans for important housing and small businesses needs.

A couple of years ago, the bank became the first institution in the country to begin offering a new bank product known as the Retirement CD. The Retirement CD gives people who want safety for their life savings the benefit of an annuity plus the protection of Federal deposit insurance. This, in turn, enables our bank to begin to provide a private sector solution to Reservation housing needs by attracting these long term deposits to an economy faced with 80 percent unemployment.

It is through the Retirement CD and other good ideas included in Title VII of H.R. 2406 that the poorest people in this country can enjoy housing that other Americans take for granted. We want to be certain that the Senate Banking and Indian Affairs Committees realize the importance of the Retirement CD to our economy as well as its direct positive impact on Reservation housing. Unfortunately, due to a retroactive regulation proposed by the Internal Revenue Service last year, the Blackfeet can no longer rely on this innovative product to attract the capital we so desperately need. This, despite the fact that the responsible Federal banking regulators, the Comptroller of the Currency and the Federal Deposit Insurance Corporation, in consultation with the Treasury Department, had already reviewed the Retirement CD and concluded that it was legitimate banking product.

The failure of the IRS to consult with the Blackfeet Tribe prior to issuing the proposed regulations is in direct violation of Executive Order 12866 and has denied the

Tribe, which owns Blackfeet National Bank the opportunity to demonstrate how long-term deposits generated by the Retirement CD are important to the safe and sound economic development of the Reservation community. We also wish to express our sincere disappointment over legislative attempts to deprive the Retirement CD of its Federal deposit insurance without so much as a hearing before the relevant Committees of jurisdiction. Thus, we respectfully request the Banking and Indian Affairs Committees help us reclaim our rights to offer the Retirement CD by opposing special interest efforts to kill this very important product that is so essential to affordable Indian housing and our basic economic self-determination and development.

Thank you for the opportunity add my written support for title VII of the Native American Housing Assistance and Self-Determination Act, H.R. 2406, and to express our views on the Retirement CD.

WRITTEN TESTIMONY OF ROLAND E. JOHNSON
GOVERNOR, PUEBLO OF LAGUNA
BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS AND
THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
ON BEHALF OF THE
PUEBLO OF LAGUNA AND THE ALL INDIAN PUEBLO COUNCIL OF NEW MEXICO
JUNE 20, 1996

INTRODUCTION

Chairman McCain and Chairman D'Amato, members of the Senate Committee on Indian Affairs, members of the Senate Committee on Banking, Housing and Urban Affairs, ladies and gentlemen. I am Roland E. Johnson, Governor of the Pueblo of Laguna. I would also like to introduce Richard Smith, Tribal Staff Officer, Norbert Waconda, Ralph Carr, Richard Ong representing the Pueblo of Laguna Housing Authority and Michael Sisneros representing All Indian Pueblo Housing Authority. I am very pleased to have been given an opportunity to speak before you today and I sincerely hope that the information and concerns that I will be presenting will give you a better understanding of the Pueblo of Laguna and our sister tribes that comprise the All Indian Pueblo Council (AIPC) in New Mexico. I therefore am speaking on behalf of the Pueblo of Laguna and the All Indian Pueblo Council. I feel that a good understanding of the Pueblo community structure is essential to the Congress in creating a Housing Program that will effectively and efficiently meet our unique needs for housing, provides for local control and sustain our communal way of life for the present and future generations.

PUEBLO OF LAGUNA DEMOGRAPHICS

I would first like to give you some information as to the Pueblo of Laguna. The Pueblo of Laguna is located in west-central New Mexico in the valley of the San Jose River. The reservation is located within the counties of Cibola, Valencia, Sandoval and Bernalillo, New Mexico. The Village of Laguna (capital of the Pueblo) is situated approximately 45 miles west of the City of Albuquerque and 31 miles east of Grants, New Mexico. Interstate 40 (Old U.S. 66) runs east-west through the reservation from Albuquerque to Gallup, New Mexico and on through to Arizona and California. The reservation lands are separated into three areas; two smaller portions of land lie southwest and northeast of the main reservation area. The

northeastern section of the reservation is separated from the main reservation area by the Canoncito Navajo Reservation; the southwestern section of the reservation is separated from the main reservation area by the Acoma Reservation. The main reservation area joins with Acoma Pueblo on the west and Isleta Pueblo on the east. There are six separate villages in the main reservation, which are all within about 12 miles of each other. The remaining lands of the Pueblo are open space used primarily for grazing.

The Pueblo of Laguna Reservation lands, which include some fairly recent purchases of other properties, now totals approximately 500,000 acres, all of which are in tribal trust status. The majority of the reservation (approximately 400,000 acres) is grazing land, with the remaining area in residential, institutional, commercial, and other natural resource uses, i.e., fishing and hunting. The majority of reservation population is concentrated in the six villages located within the reservation boundaries. Housing in each of these villages is comprised of traditional homes, HUD low income scatted housing and HUD low income housing developments. A commercial development and an elderly housing and health care facility are located in the Village of Casa Blanca; and industrial complex is located in the Village of Mesita; tribal offices are located in the Village of Laguna; and gas stations and community stores are located in the Villages of Casa Blanca and Laguna.

All of the lands within the reservation boundaries are owned communally by the Pueblo of Laguna and are overseen by the Pueblo of Laguna Tribal Council. Total tribal membership of the Pueblo is 7421, on reservation membership is 3892, and total members and non-members living on the reservation is 4420, as of April 29, 1996. Housing is presently comprised of traditional Pueblo homes and 450 low income homes under the management of the Pueblo of Laguna Housing Authority.

ALL INDIAN PUEBLO COUNCIL DEMOGRAPHICS

The nineteen (19) Indian Pueblos in New Mexico include the Pueblo's of Acoma, Cochiti, Isleta, Jemez, Laguna, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santa Domingo, Toas, Tesuque, Zia and Zuni. It is these Pueblos that comprise the All Indian Pueblo Council (AIPC).

The Pueblos today operate under a form of government that is native and European, the European form of government having been introduced by the Spaniards in colonial times. There are two forms of this Spanish Government structure. One form was introduced by Onate in 1598. The other occurred by royal decree in 1620. While each of the nineteen (19) Pueblos is autonomous, most of them are being governed according to ancient tribal systems. They also operate a coalition system of government under the All Indian Pueblo Council. This permits

mutual counsel and allows for the development of a degree of political power to Pueblo relations with the state and federal governments.

HR 2406
TITLE VII, NATIVE AMERICAN HOUSING ASSISTANCE, OF THE U.S. HOUSING ACT OF 1996

While the Pueblos support the "Concept" of Block Grant Funding directly to Tribes, the All Indian Pueblo Council, by resolution, has adopted the concerns of the Southwest Indian Housing Authority Association (SWIHAA). Laguna Pueblo itself wishes to also go on record in support of the SWIHAA position and also includes other concerns related to this reform legislation that passed the House of Representatives on May 5, 1996. Listed are the General and Specific concerns of AIPC. Following these listing are additional concerns of the Pueblo of Laguna.

ALL INDIAN PUEBLO COUNCIL - GENERAL

1. AIPC continues to look forward to working together with the Secretary in issuing regulations implementing the Act as provided for in Section 716. The only change that we would make is to add "and/or their tribally designed entities" at the end of the last sentence of Section 716(b)(2). It is our understanding that the negotiated rulemaking applies to the entire Title VII.
2. The requirement for the Local Housing Plan should be made regulatory and not statutory. The requirements should additionally be simplified and not onerous to Indian Tribes or their tribally designated entities.
3. The Act should not disadvantage small tribes in that any funding they receive should be sufficient to allow them to continue to operate as a housing entity.
4. The Act should not subject Indian tribes or their tribally designated entities to the jurisdiction of the federal courts. As recognized by Congress through treaties with Indian tribes and their general course of dealing with Indian tribes, Indian tribes are sovereign nations.
5. The termination of the 1937 Housing Act should end the era of providing for only those Indian Families that the federal government has determined to be low income. This mode of thinking has given Indian people the perception that to qualify for housing one must remain low income. As such, we propose that the legislation language be revised to provide housing opportunity not only to low income individuals, but also all Indians eligible for federal services based upon the federal trusteeship. The Federal Government has not only a fiduciary responsibility, but a Trust responsibility to provide opportunities for housing for all Native Americans.

ALL INDIAN PUEBLO COUNCIL - SPECIFIC

1. COMMUNITY DEVELOPMENT BLOCK GRANTS: Community Development Block Grants (CDBG) should continue to be provided for under the present program and not part of Title VII. It is crucial to protect CDBG as a separate source of funding since this program provides for a tribe's infrastructure needs. Funding for CDBG for tribes should be increased from one percent (1%) to one and one half (1.5%) of total CDBG funding allocated to States.
2. SECTION 712 - LOCAL HOUSING PLAN: As stated in the general comments this section should be made regulatory. The plan should be similar to the plan requirements of the Comprehensive Grant Program requirements.
3. SECTION 712(f) - PLANS FOR SMALL TRIBES: The definition of "small tribes" should not be based solely on the number of dwelling units provided for either under this title or the U.S. Housing Act of 1963, but rather should be based on other factors such as population and the need for housing.
4. SECTION 714 - TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS: AIPC continues to insist that Indian tribes or their tribally designated entities should not be subject to Davis Bacon wages. Indian tribes should have the flexibility to establish their own labor rates consistent with the economic conditions on their respective reservations. As such, all reference to Davis Bacon wages should be deleted.
5. SECTION 718 - AUTHORIZATION OF APPROPRIATIONS: AIPC maintains that Indian country needs at least $1.5 Billion dollars appropriated each fiscal year plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor. The housing needs in Indian country were addressed twenty-five years after the housing needs for the rest of the country were addressed.
6. SECTION 721 - NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES: As stated in the general comments, this title should provide housing opportunities for all Native American families and not just low income families.
7. SECTION 726 - CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS, SECTION 727 - LEASE REQUIREMENTS & TENANT SELECTION, AND SECTION 728 - REPAYMENT: These sections should be removed from the Title and made regulatory subject to negotiated rulemaking.
8. SUBTITLE D - COMPLIANCE, AUDITS AND REPORTS: All sections under Subtitle D should be deleted and made regulatory subject to negotiated rulemaking.

PUEBLO OF LAGUNA CONCERNS

1. Definition of "Indian Tribes" includes tribes that are "State Recognized". This definition does not follow the "Federally Recognized" definition and process for federal recognition. The major concern is that States do not have a clear

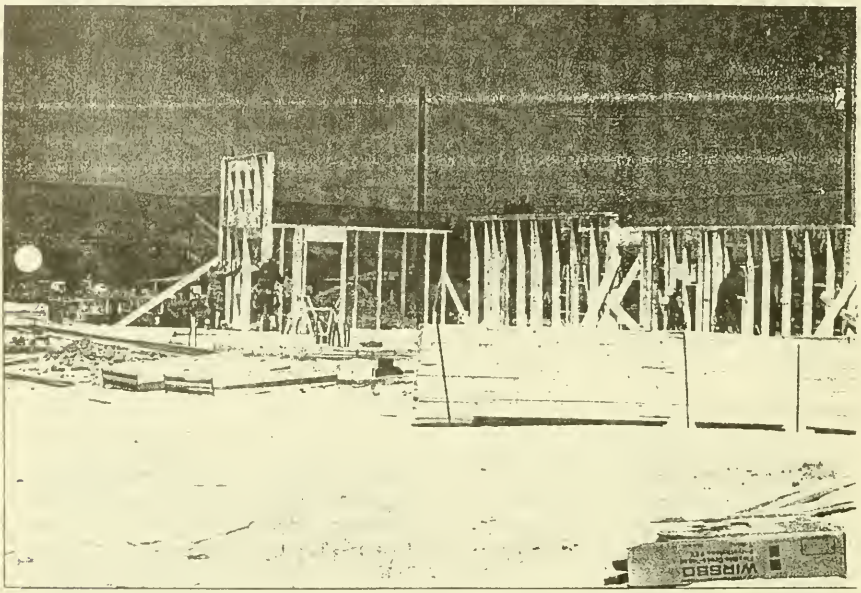
defined criteria for recognition of Indian Tribes and the Pueblo is opposed to any legislation that provides a statutory recognition of the States infringements on the Pueblos sovereign powers. The Pueblo proposes that State Recognized Tribes be left in the Public housing program and not part of Title VII.

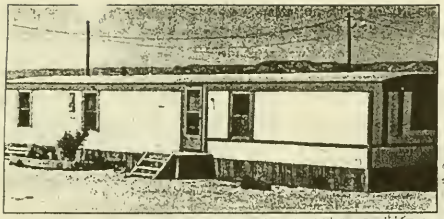
2. The right for the Pueblo to determine if it will manage the program through a department of the Pueblo or designate a housing entity must be protected and clearly stated in the legislation. Providing the funding through a Block Grant to the Pueblo and the Pueblo exercising it powers of self governance will be the best process in protecting this right. This not to say that the Pueblo's IHA will not be the entity that will manage the program, but the Pueblo is the entity that has the Government to Government relationship with the federal government and the legislation should not provide for any process to circumvent this relationship.
3. Formula funding for the Block Grant are not defined in the legislation. The Pueblo proposed that size of the tribe and their respective unmet housing need be a major factor in the formula that determines funding levels. Historically, the Pueblo did not far well in units constructed, in relationship to need, under the present program. Therefore, the Pueblo is significantly behind on the number of units (450) under management than a tribe of similar size.
4. Construction of homes utilizing conventional mortgage financing programs are not available to the Pueblo membership of middle and moderate income levels, due to the Trust status of the lands. The 248 and the 184 programs are essential to the development of the housing market on tribal lands. Coordinated efforts of the programs is needed to focus efforts that will result in construction of homes on the Pueblo.

CONCLUSION

In conclusion, Chairman McCain and Chairman D'Amato, on behalf of the All Indian Pueblo Council and the Pueblo of Laguna, I wish to extend my appreciation to the Joint Committee in allowing me the opportunity to provide input into the legislative process for the reform of Indian Housing Program. At this time, I am obligated to state that a significant amount of effort has be spent on this legislation between Congress and the various Indian Housing Authority organizations. Again, Tribes find themselves in a situation where they must react to this critical reform legislation. With due respect, I must state to the record that the Indian Housing Authority's are entities created by Tribal Government and it is the Tribal Government that must be in the lead in any legislative reform that is to impact our communities. With that, I pledge the support of the respective Council's of AIPC and the Pueblo of Laguna to continue the effort to address the critical shortage of descent, safe, and affordable housing in Indian Country. My colleagues and I stand ready to answer any questions you or the members of the joint committee may have regarding my testimony.

INDIAN COUNTRY TODAY
AMERICA'S LARGEST INDIAN NEWSPAPER
VOLUME 15 • ISSUE 50 JUNE 4 - 11, 1996





Steve Brambach/*Indian Country Today*

Home at last: Construction of a new home for Bertha Medina of San Juan Pueblo, N.M., took only 55 days and cost a third less than that of a typical dwelling unit built by the U.S. Department of Housing and Urban Development. The house was built through the Pueblo's new program, which is under the direction of the All Indian pueblo Housing Authority. Donald Cruz, housing commissioner for the pueblo, spearheaded the construction of Ms. Medina's new home – something she had waited nine years to move into. The pueblo plans to build 28 houses by the end of the year under the new program.

Building for Bertha

San Juan Pueblo housing program puts it all together without HUD

By Steve Brambach
Indian Country Today

SAN JUAN, N.M. – When the Pueblo of San Juan condemned the five-year old house in which Bertha Medina and her family had beeo living in for over a year and moved them into a "temporary" mobile home she had no idea that "temporary" meant nine years.

This May, Ms. Medina and her family moved into a new quality three-bedroom house that was built by the pueblo under a new program in co-operation with the All Indian Pueblo Housing Authority.

The house was built in 55 days and for one third less than the cost of a typical dwelling built by the federal Housing and Urban Development Department.

The pueblo plans to build 28 houses by the end of the year. Three have been completed, one is being framed up, and two slabs have been poured and are hardening.

Michael Sisneros, executive director of the All Indian Pueblo Housing Authority, spearheaded the new program. He had worked for HUD and knew about the Acquisition Program from the early '80s when the government had determined that it was more cost effective to buy pre-existing rental units than to build them from scratch.

"I was fed up with the four walls and a roof that HUD forced on tribes," he said.

He decided to use the letter of the law and the department's own rules against it.

"It took two years to put it together and wrangle our way through court, but the court found that we were within the letter of the law. Even though the units don't already exist, if the tribe puts the houses up, HUD has to pay for them," he said.

He would approach the pueblos and offer them the alternatives of building houses under the tradi-

Please see **Bertha** C8

Bertha: just 55 days to a new home

From C7

tional HUD method, which meant long waits for expensive, inferior homes or, if they could raise the capital and were willing, to speculate, they could build the homes and sell them to HUD.

Rather than contract out the construction, San Juan saw the opportunity to expand its economic base by starting its own construction company.

"It all boils down to quality homes and tribal employment," said Donald Cruz, housing commissioner for the pueblo. "Finally a government program that benefits people."

"We have 20 employees working now for Tsay Construction, and we ask that all subcontractors hire tribal members when they can. We are just learning the process ourselves. We are trying to earn the trust of the banks here. We also want to get the word out," said Lou Abbott, construction manager for Tsay Construction.

Mr. Abbott stressed that the project is a direct result of tribal gaming. Tsay Construction's purpose is to foster economic diversity. With the money from gaming and the help of a half-million dollar loan from SunWest Bank, the pueblo started the construction company and hired Arrowhead Consultants, an Indian-owned architectural firm in Albuquerque to design and plan the project.

"We build the house. HUD buys it from us to rent and eventually sell to the families it rents the home to at an adjusted rate. We then take the money and use it as seed money to build the next house," Mr. Abbott said.

The project is having an economic impact already. As an offshoot of construction the pueblo started Tsay Cabinets to manufacture cabinets for the houses. The pueblo put up an empty warehouse, spent $75,000 to buy the equipment and hired tribal member James Calvert to hire a crew and manage the new enterprise.

"HUD homes suck. They were built badly, and so were all their fixtures and cabinetry. This gives members an opportunity to help themselves and their community. We are motivated. We not only make the cabinets for the homes here, but we have contracts now to make cabinets for construction companies in Abiqui, Mendenales and Santa Fe. We are now looking at making furniture by the end of summer as another sideline that will employ more people. We're gonna make this thing fly," Mr. Calvert said.

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July 3, 1996

The Honorable John Mc Cain
Chairman, Committee on Indian Affairs
United States Senate
Washington, D C 20510-6450

SUBJ: SENATE JOINT HEARING OF JUNE 20, 1996, SUPPLEMENTAL INFORMATION.

Dear Senator McCain

The All Indian Pueblo Council, AIPC, of New Mexico, comprised of the 19 federally recognized tribes of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santa Domingo, Tesuque, Taos, Zia, and Zuni, responds to your supplemental questions and for the June 20, 1996 senate hearing record

1 Title VII is consistent with the federal policy of tribal self-determination and self-governance in consolidating all HUD-related funds into a single block grant to an Indian tribe or its designated recipient, however, CDBG must not be included into Title VII as a consolidated HUD fund Since CDBG funds are the tribes' sole source for infrastructure, economic opportunities, legal systems, and other dire, acute, and important needs. we feel that a consolidation or commingling would seriously erode the aggregate amount of funds for tribes or their designee for housing and CDBG

2. It is the position of the 19 New Mexico Pueblos that CDBG funds remain separate much like they remain separate for all states and aside from public housing funds

3 The severe unmet need for housing in our 19 Pueblos is that for every HUD home that we have under management (2,400 total), we have a corresponding number of low-income eligible families on waiting lists This low-income unmet need does not include those families exceeding and falling under the HUD determined low-income guidelines, these families are kept waiting with their dreams of a decent, safe, and affordable home evaporating with the years

4 The statutory provisions of the Davis-Bacon Act as imposed on Indian country are certainly inconsistent with the federal policy of self-determination and self-governance. In Indian country, most of which is rural, isolated, and remote, and then to comply with the big city union labor influences in Washington, D C., which adds approximately 15-20% to the cost of our reservation homes, contributes to our unmet needs in undelivered homes,

and results in an unreasonable costly home

5 Without Davis-Bacon we in New Mexico could deliver one-fifth to one-third more of much-needed homes HUD's primary role should be to ensure that funds are spent in accordance with the federal legislation developed in partnership with tribal government, and with the authority to waive those federal statutes not applicable to Indian country as pertaining to unique circumstances

6 The federal government has a fiduciary responsibility to provide opportunities for housing for all Native Americans, not just those in that narrow band width HUD determines to be low income HUD's income thresholds and ceilings are not realistic for Indian country and severely limit family eligibility for housing, and thus promote the continuing and growing housing shortfalls

7 Simplify the plan requirements by making the plan regulatory, not statutory, and by way of negotiated rule making for application to differing tribes, customs, traditions, and physical conditions and environments.

Enclosed for your review is a HUD inspector general report on recent New Mexico Tribal/HUD housing developments which address your inquiry into the San Juan Development project

On behalf of the 19 federally recognized Indian Pueblos of New Mexico, I sincerely thank you for having been given the opportunity to testify on Title VII of HR 2406. We are indeed fortunate to have you as chairman of Indian Affairs, and for your service, understanding, and advocacy of Indian sovereignty in both the Indian and Governmental Affairs Committee The 19 Pueblo governors of New Mexico wish the learned and distinguished Senator good health and successful endeavors.

Very Sincerely Yours,

Roland E Johnson,
Governor, Pueblo of Laguna

cc Senator Pete Dominici
AIPC

Enclosure

THE ACQUISITION METHOD OF DEVELOPING HOUSING FOR NATIVE AMERICANS

PRESENTED BY PACIFIC/HAWAII DISTRICT

APRIL 11, 1996

Presented by: John Thomas and
Chrystina Newton

The Acquisition Method of Developing Housing for Native Americans

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INTRODUCTION

After years of paying high prices for conventionally developed houses, All Indian Pueblo Housing Authority (AIPHA) and its member tribes initiated a program of producing Low Rent and Mutual Help housing through acquisition. By using the acquisition method, the cost of housing is lower, which has resulted in developing larger, better quality homes. The homes developed are significantly upgraded from conventionally produced houses. The acquisition method has also enhanced tribal economic development, created jobs for Native Americans, and reduced the amount of time and paperwork normally required by Indian Housing Authorities (IHAs) and HUD to develop housing. Although this method of development may not be feasible in all cases or with all tribes, HUD should clarify the policies for tribal governments and IHAs interested in the acquisition method of development.

During our ongoing review of AIPHA, we toured the Zia, Isleta, and San Juan pueblos. All three pueblos had homes currently under construction using the acquisition method. We also interviewed tribal government officials, employees of AIPHA, contractors, and new residents of completed acquisition projects. Based on this review, we believe the acquisition method is a viable program which will enhance the lives of Native Americans participating in HUD's Indian Housing Programs.

The Zia, Isleta, and San Juan pueblos, using the acquisition method, develop the homes themselves or contract the work out. When completed, and if the housing meets all HUD requirements, AIPHA purchases the units from the tribes. This process eliminates the need to comply with the Davis-Bacon Act, a cause of excessive amounts of paperwork for both the IHA and HUD. Less paperwork requirements result in lower costs of administering the project since the tribe, not the IHA, handles the construction paperwork, payments, and inspections. Secondly, limiting HUD involvement during construction attracts more contractors to get involved in constructing homes for Native Americans.

Finally, we believe it is important that HUD develop clear guidelines and criteria concerning the acquisition method because more tribes such as Navajo, Jicarilla, and Laguna Pueblo have expressed an interest in this method of development.

BENEFITS

The acquisition method provides five potential benefits:

- increases Native American self-determination,
- is more responsive to cultural needs,
- encourages tribal economic development,
- produces lower cost homes in a quick time frame, and
- with less government restrictions, more competition is encouraged.

SELF-DETERMINATION

Under the acquisition method, the tribes have the flexibility to build housing which meets their needs; to have full control over development; and to gain a full appreciation of what it takes to implement a development program. This learning process provides a measure of self-sufficiency not available through other Federal housing programs.

For example, at Isleta Pueblo, the main advantage of the acquisition method is the autonomy afforded in community planning. The tribal officials we spoke with would like the Federal government to continue to grant the tribe the independence to develop their community with housing that meets their specific needs.

The acquisition method allows home design flexibility that is RESPONSIVE TO CULTURAL NEEDS. At both the Zia and Isleta Pueblos, the future residents' desires to have bigger living room and dining room areas to accommodate feast day events were taken into consideration in the selection and design of the homes. Additionally:

- Four different floor plans are offered at the Isleta Pueblo, three of which were specially designed with the tribe's input.

- The San Juan Pueblo's Tsay Construction Company designed the homes being built with input from the future residents and a Native American owned architectural firm.

The acquisition method provides more resident satisfaction than the conventional method. As you will see in our video presentation, residents are happy with their new homes because their needs are better met.

The acquisition method provides a better quality home. At Isleta, the housing quality is guaranteed by a first year unconditional warranty; a second year systems warranty (i.e. electrical and plumbing); and an additional eight year structure warranty.

TRIBAL ECONOMIC DEVELOPMENT

The Zia Pueblo is earning interest on a loan made to the contractor and several tribal members have been hired to work on the construction effort.

At Isleta, economic development is occurring on several fronts. A tribal member was hired as a subcontractor to lay the plumbing lines to the new homes; tribal members are being employed by the construction company; the tribe is selling gravel to the contractor for use in landscaping; and the contract includes tribal designed development of other ventures such as a commercial site, a waste management facility, and a future school site.

This presentation is based on interviews, documentation, and our observation of construction in process and completed construction efforts. The circumstances and cost estimates presented have not yet been verified.

San Juan Pueblo's Tsay Corporation estimates that fifty to sixty jobs will be created through the construction of new homes. Approximately twenty of these jobs will be trainee positions. The new housing construction has helped the corporation to gain experience and establish a line of credit for future efforts. The corporation also works on outside private construction and would like to expand their operations to other pueblos. Tsay Corporation estimates that, due to the acquisition construction work at San Juan, they will receive a 7% profit (18,000) and $177,000 worth of benefits will be received by tribal members.

The acquisition homes have **LOWER COSTS WITH MORE AMENITIES** than conventional housing. The cost on the latest conventionally developed homes at Sandia Pueblo is $69/sq.ft. The cost range on the acquisition homes is between $48 and $65/sq.ft. with many more options and amenities for the future residents. Please see the supplemental information on pages 6 and 7 for more details on cost.

The amenities offered to the Zia Pueblo included color schemes and carpet choices.

At Isleta Pueblo, the future residents have a myriad of choices on their homes, including:

32 carpet colors,
16 exterior brick styles, and
15 accent tile colors for kitchens and bathrooms.

We noted **NO DELAYS** between the time of contract signing and completion of the acquisition homes. At Zia Pueblo, the first home was ready for delivery four months after the contract was signed. At Isleta Pueblo, the contract time is nine months to complete fifty homes. Seven homes were at or near completion at March 29, 1996 (approximately six weeks into the contract period).

LESS GOVERNMENT RESTRICTIONS ENCOURAGES MORE COMPETITION

The consensus among contractors and tribal officials is that the sparse government restrictions on acquisition are more favorable for competition and negotiation of contract terms as more contractors are willing to bid on the jobs. The contractors involved in building the acquisition houses at both the Zia and Isleta Pueblos estimate a cost savings in the range of 13% to 50% over building within the constraints of the Davis-Bacon Act, and promotes a better mix of subcontractors as more were willing to bid on a non-government contract. The cost differential is attributable to increases in both labor and administration rates and times. The contractors at Isleta stated that, under the Act, not only would the labor rates be higher, but the time to finish the homes would be extended because it would not be economically feasible for the company to pay overtime. They also stated that they would have to hire two additional staff members to process paperwork if they were required to comply with the Act. Finally, the contractors stated that they would not accept a project if it required compliance with the Davis-Bacon Act.

This presentation is based on interviews, documentation, and our observation of construction in process and completed construction efforts. The circumstances and cost estimates presented have not yet been verified.

PROBLEMS AND SOLUTIONS

The acquisition method has four potential problems:

- insufficient HUD guidance and regulation,
- uncertainty concerning Davis-Bacon Act compliance,
- financing concerns for smaller tribes, and
- an uncertain relationship between cost and appraisal value.

EXISTING HUD CRITERIA IS LIMITED AND INSUFFICIENT for the acquisition method. On February 23, 1996 Frank Padilla, Director of the Albuquerque SWONAP office, wrote a letter to the AIPHA Attorney. This letter provides the most definitive source of criteria and HUD guidance we could find on the acquisition method. An interesting point about the cited criteria is that the IHA cannot be involved in the planning and construction phases except in arm's length transactions; IHA involvement begins when it purchases the home.

24 CFR 950.215(a) lists acquisition as one method of development. However, the Indian Housing development criteria (24 CFR 950.200 - 950.285) contradicts the requirement that pre-purchase dealings between the IHA and the tribe be at arm's length. For example, 24 CFR 950.265 states that whatever the development method used, the IHA is responsible for inspections of the dwelling homes throughout the construction period.

This sparse and contradictory HUD regulation causes confusion for the tribes, the IHAs, and banks. All parties involved in the construction contracts are hesitant for fear of violating the terms of an arm's length transaction and having to comply with the Davis-Bacon Act.

SOLUTION: In order to make the acquisition method a successful option for IHA development, HUD needs to establish standards to guide the tribes, IHAs, and banks. Additionally, the tribes must adopt federal, state, or local building codes to ensure that quality will continue to be an integral part of the acquisition method of development.

There is uncertainty among HUD, IHAs, and the tribes concerning **DAVIS-BACON ACT COMPLIANCE** and the acquisition method. Under the Act, there is less competition because of the higher administration costs to process paperwork and higher wages. We understand there are currently a core of five or six companies which build the majority of homes for IHAs. Most other construction companies do not want the hassle of government bureaucracy.

We interviewed Mr. Coda Roberson, who recently completed a home at Jemez Pueblo. Mr. Roberson said he used to build Public Housing homes for the Albuquerque PHA, but stopped building PHA homes because of the hassle of compliance with HUD and Davis-Bacon requirements. Mr. Roberson said he had to have additional clerical

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This presentation is based on interviews, documentation, and our observation of construction in process and completed construction efforts. The circumstances and cost estimates presented have not yet been verified.

staff to process the paperwork, including the weekly review and submission of payrolls for all subcontractors, a requirement of the Davis-Bacon Act. Second, working on both Davis-Bacon projects and non-Davis-Bacon projects at the same time caused problems with employees. For instance, carpenters are paid different wages depending which project they work on, even though they are doing the same work. Mr. Roberson said most contractors are either not able or willing to put up with this type of bureaucracy.

SOLUTION: The relationship and distinction between the Davis-Bacon Act and the acquisition method needs to be better defined by HUD.

Some of the **SMALLER TRIBES HAVE PROBLEMS COMING UP WITH THE NECESSARY CAPITAL** to build the acquisition homes.

According to AIPHA's Executive Director, the tribes are not reimbursed for the acquisition homes until after the Contract of Sale is signed. Some of the smaller tribes or those tribes with limited sources of income are not able to front the initial capital and have not had the opportunity to establish credit. In the end, these tribes can only afford to construct a few homes at a time which does not allow for the economies of scale necessary to make the acquisition method work. Additionally, the homes are only safe from a government rescission after the Contract of Sale is signed. In the event of a government spending cutback, the tribes could lose funding for homes that they have already contracted to build.

SOLUTION: HUD should explore possible ways to assist tribes in obtaining financing for constructing acquisition homes. For example: can HUD guarantee construction loans or lines of credit without violating the arm's length transaction requirements or enacting Davis-Bacon Act limitations? Or, could HUD finance the tribe directly rather than funding the IHA allowing the tribe to control the acquired homes within the same limitations as stated above?

The maximum that the IHA can pay for an acquired home is the appraised value. If the home is appraised at a lower value than the tribe's expenses, **THE COSTS TO BUILD THE HOME WILL NOT BE COVERED.** If the IHA pays a lower price for the acquired home, the tribe, having no other potential buyers, would be forced to sell at the lower price to cover as much of their costs as they could. For example, at Sandia Pueblo, AIPHA's Executive Director believes that the conventionally built homes completed last year would appraise for much less than their cost. If these homes were built using the acquisition method, the tribe would have to cover the balance of the costs above appraised value.

SOLUTION: The possibility that the appraised value could be lower than cost should act as an incentive for the tribes to keep costs in line with the home's value and quality, but could force tribes to build fewer homes than budgeted if their costs are not covered.

This presentation is based on interviews, documentation, and our observation of construction in process and completed construction efforts. The circumstances and cost estimates presented have not yet been verified.

COMPARATIVE ANALYSIS OF HOUSING DEVELOPED UNDER THE CONVENTIONAL AND ACQUISITION METHODS

Pueblo	SANDIA	ZIA	ISLETA	SAN JUAN
Number of Units	54	23	50	28
Construction Method	Conventional	Acquisition(1)	Acquisition(2)	Acquisition(3)
Cost of Home	$89,809	$72,635	$77,220	$93,275
Square Footage	1295	1506	1404	1435
Square Foot Cost	$68.57	$48.16	$55	$65.00
Size	3 Bedroom	3 Bedroom	3 Bedroom	3 Bedroom
Bathrooms	1 Bath	2 Bath	2 Bath	2 Bath

(1) "Offsite conventional;" home is built off site and trucked to pueblo.

(2) Commercial contractor is building homes on site.

(3) Tribal construction company is building homes on site.

CHART

COMPARISON OF PARTICIPANT OPTIONS, AMENITIES, AND TRIBAL ECONOMIC ADVANTAGES

Pueblo	SANDIA	ZIA	ISLETA	SAN JUAN
Participant options and/or amenities	* Colors	* Tribe amended floorplan and design to meet cultural needs	* Tribe amended floor plan and design to meet cultural needs	* Tribe designed floor plan for cultural needs
		* Color schemes	* Color schemes	* Color schemes
		* Carpets	* Carpets	* Carpets
		* Wired for ceiling fans	* Dishwasher	
		* Optional alcove for microwave oven	* Ceramic tile counters and shower	
			* Fireplace	
			* Exterior brick style & color	
			* Landscaping / sprinklers	
			* Backyard fences	
Economic advantages for tribe	* Information not available	* Earning interest on loan to developer	* Selling gravel to contractor	* Helping establish credit history for Tsay Corp.
		* Tribal members hired for construction	* Hiring of tribal members	* Giving experience for future large construction projects
		* Earning income from contractor renting Tribal equipment and using Tribal water	* Part of a development which includes school, additional housing, mobilehome park, and a shopping center	* 7% (est. $185,000) profit for Tsay Corp. tribal construction company
				* Using Tsay Cabinet Co.
			* Hired tribal member as subcontractor for tribal members	* Creating jobs (estimated income of $177,000) for tribal members

Sandia Pueblo

NA-FIAT

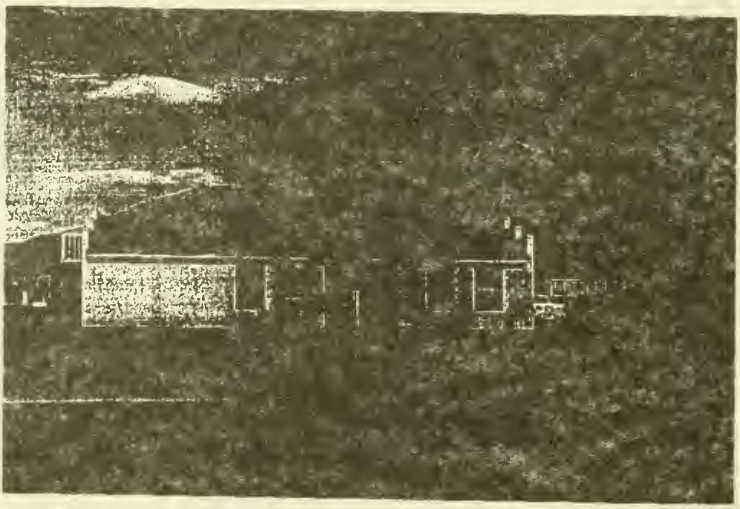
Many people associate the word "Sandia," which means "watermelon" in Spanish, with the Sandia mountain, which is so called because of its pink color at sunset; however, the Sandia Pueblo, in the Tiwa language of the Indians, is called "sandy place" or "dusty." Sandy and dusty it must have been in ancient times, because the pueblo people found it necessary to irrigate large areas for agriculture. They are still among the most successful Indian farmers today, although the acreage devoted to farming is greatly reduced. However, hunting is still popular.

During the Pueblo Revolt of 1680 the Sandia people, greatly outnumbered by the Spanish, fled the pueblo and joined the Hopi tribes in Arizona. After sixty years of exile, during which their two cultures mixed, they returned to their ancestral home. Despite the addition of Hopi customs and ceremonies, the Sandia Pueblo continues to conduct tribal ceremonies and festivals with traditional music and costumes. No photography, drawing or painting of their people or customs are allowed, but outsiders are permitted at some of their dances.

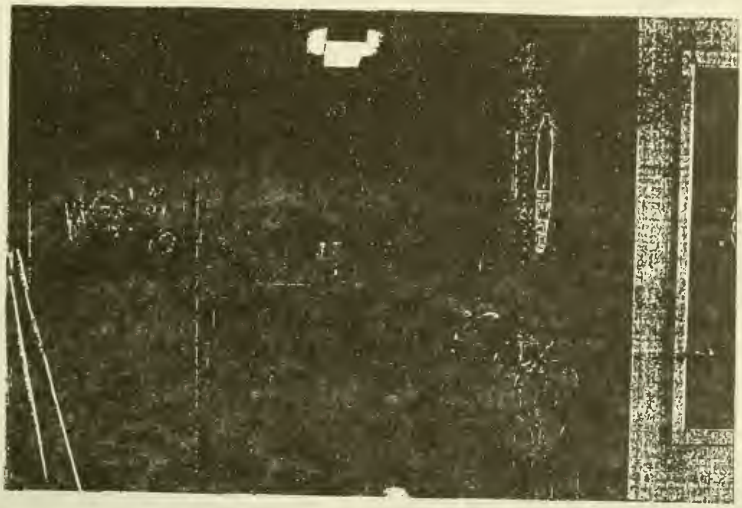
Revenue apart from farming is largely from employment in nearby towns, where the Sandia men are in demand as skilled laborers in construction and surveying. Another source of income is derived from leasing land to the aerial tramway, which carries thousands of sightseers and skiers to Sandia Peak every year. Possibly because so many people come to ride the tramway, Sandia people have developed other ways to entertain them, such as the well known Sandia Bingo, which draws crowds every week and proves profitable to the pueblo.

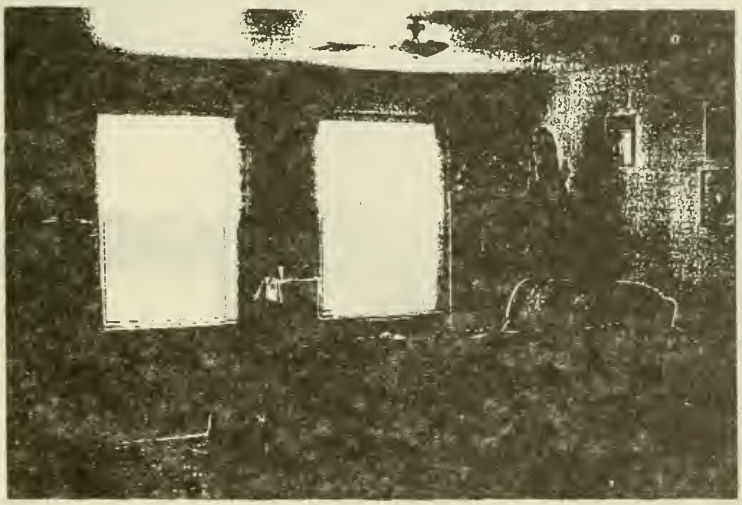
The only festival open to the public that the Sandia Pueblo celebrates is the San Antonio's Day Corn and Buffalo Dances which take place in June.

Area. 22,884 acres



Sandia Pueblo





Zia Pueblo

TSIA

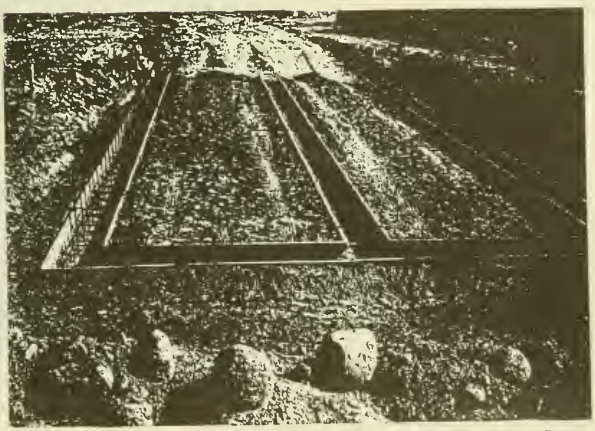
To anyone travelling along the road sixteen miles northwest of Bernalillo, New Mexico, Zia Pueblo is almost invisible. It is situated on a rocky knoll, where it blends into the landscape like a natural feature of the terrain. For six hundred years it has weathered the worst that man and nature could inflict upon it - and it has survived. Although the pueblo itself is inconspicuous, its Sun Symbol is familar to all New Mexicans, for it is the official state insignia appearing on the flag and adopted by the New Mexico Legislature in its salute, "I salute the flag of the State of New Mexico, the Zia symbol of perfect friendship among united cultures.

Zia Pueblo suffered disasterous losses in the Pueblo Revolt. Six hundred people were killed and additional conflicts lasting for years reduced the population still further. They are still a small community of agricultural workers and livestock raisers, but they have a strong sense of identity and have produced beautiful traditional works of art. Prominent among Zia crafts is pottery; unpolished redware with white slip, with decorations in brown or black are produced, often with a bird motif. The Zia tradition is faithfully adhered to; innovation is avoided. Some Zia painters have achieved recognition for their watercolors. The traditional language of the Zia pueblo is Keresan, but many speak Spanish, some speak Navajo and most also speak English.

The principal festival of the year for the Zia Pueblo is the Corn Dance on the feast day of Our Lady of the Assumption in August. Wonderful traditional costumes and ceremonies make this an important event in the life of the pueblo and one which is very attractive to visitors.

Area: 112,533 acres

Zia Pueblo



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San Juan Pueblo

O'KANG

The San Juan Pueblo has a well known art center, the Oke Owinge Arts & Crafts Co-Operative, where visitors may watch many of the artisans working in a variety of art forms, and where jewelry, pottery, and other work from over one hundred artists may be purchased. One of the most interesting aspects of the San Juan Pueblo life for the visitor to the co-op are the numerous ceremonies that take place throughout the year, under the auspices of the two-part social system, the Winter People and the Summer People. The Deer Dance, for example, which is performed to assure prosperity for the coming year, is conducted by the Winter People in January or February. As in many other dances, humor is an important element, here furnished by caricatures of Apache hunters, who stalk the dancers and pretend to hunt them with sunflower-stalk arrows. There are Buffalo Dances, Basket Dances and a Cloud Dance at various times of the year, and at some of them the traditional clowns accompany and tease the serious dancers.

The San Juan people have a complex and fascinating cultural history. They divide the physical world into three parts: the village and surrounding land, which is the realm of the women, the second circle is comprised of the hills and mesas surrounding the first circle and is the realm of both men and women; the third circle encompasses all beyond the second and is the world of hunting and protection from a hostile outside world, and this is the exclusive realm of the men. All ceremonies and dances are centered on this division of influences and relate to various aspects of daily and seasonal life. Great importance is placed upon the teaching of responsibility.

Although many San Juan people work outside the Pueblo, most of them return for ritual occasions and ceremonies. Their language is Tewa.

Area: 12,238 acres

SAN JUAN PUEBLO

3 BEDROOM 1495 SQ FT

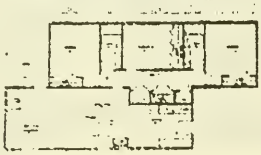
COST BREAKDOWN
PER UNIT COST- $ 111,972

4 BEDROOM 1665 SQ FT

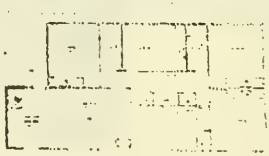
COST BREAKDOWN
PER UNIT COST- $ 117,570

ARROWHEAD Consultants

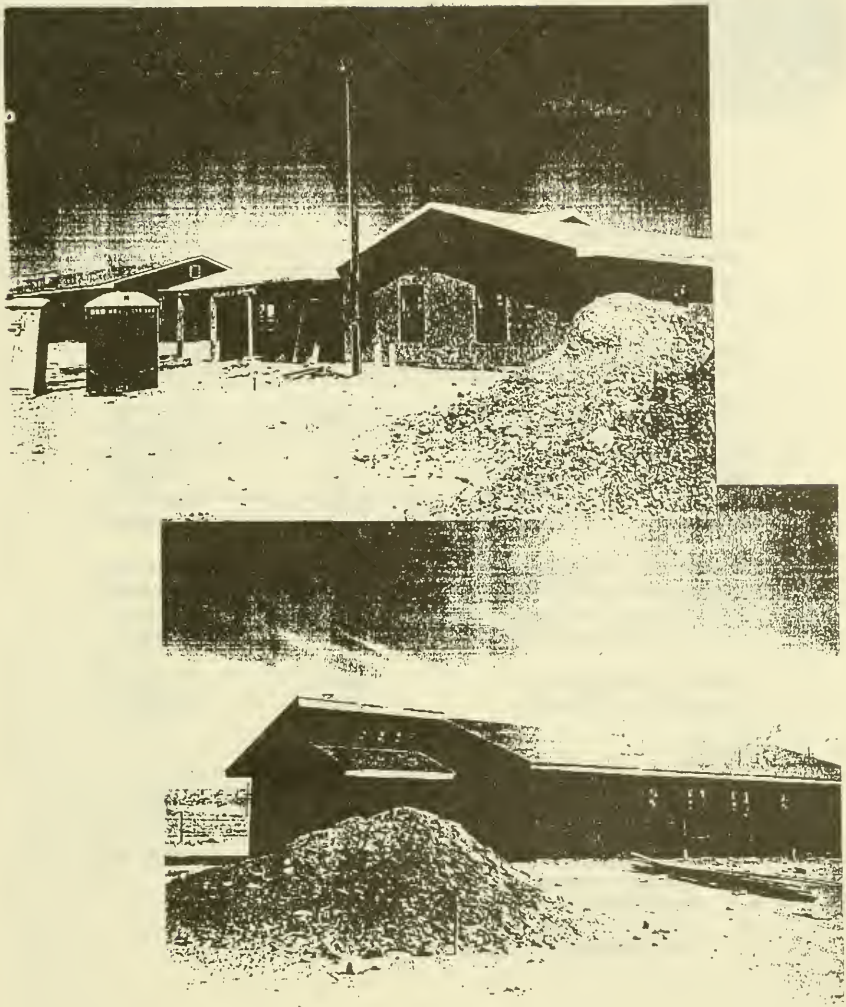
3 BEDROOM FLOOR PLAN



4 BEDROOM FLOOR PLAN



San Juan Pueblo



TSAY CONSTRUCTION

P.O. BOX 1270
SAN JUAN PUEBLO, NEW MEXICO
87566

MEMORANDUM

Date: March 26, 1996
To: John Thomas, HUD Auditor
From: Lon Abbott, TSAY Construction
Re: Benefit of acquisition process

Impact of San Juan Pueblo Housing Project, in terms of wages paid to Tsay Construction Company and related tribally owned to tribally operated companies.

Delores Allison	$8.00 per hour	1 year	=	$17,000.00
James Calvert	$15.00 per hour	1 year	=	$31,000.00
Lindbert Martinez	$9.00 per hour	1 year	=	$18,720.00
Clifford Cruz	$12.00 per hour	1 year	=	$25,000.00
Allen Bird	$5.00 per hour	1 year	=	$10,000.00
Mike Montoya	$8.00 per hour	approx.	=	$ 7,000.00
Carpenter crew - tribal members		approx.	=	$25,000.00
Plumbing crew - 3 tribal members		approx	=	$25,000.00
Vicente Martinez - tribal utility company			=	$53,783.40
Lindsay Cata and Duane Garcia		approx	=	$25,000.00
Benefits to tribal employees		approx	=	$177,000.00
Tsay construction will profit		approx	=	$185,000.00

Benefits:

1. We use tribal members in our business.
2. We hire local contractors, who use tribal members.
3. we furnish list of tribal members who are eligible for work for all subs., and we encourage subs to pick these people up.
4. Profit margin for us is 7%.
5. We control materials used.
6. We and architect monitor quality.
7. We are learning progress of building HUD homes.
8. We listen to needs of tribal members as far as home needs.

TSAY CONSTRUCTION

P.O. BOX 1270
SAN JUAN PUEBLO, NEW MEXICO
87566

Date: March 26, 1996

To: John Thomas, HUD Auditor
From: James Calvert, Cabinet Supervisor

Dear Sir,

My staff and I would like to express our heart filled thanks for the opportunity given to us to construct the kitchen and bath cabinets for the San Juan Housing Project.

This opportunity will give us recognition but most of all motivation to continue with projects such as this.

HUD has provided a big jump for the Pueblo of San Juan and the cabinet shop to provide quality cabinets for the units being built for our pueblo people.

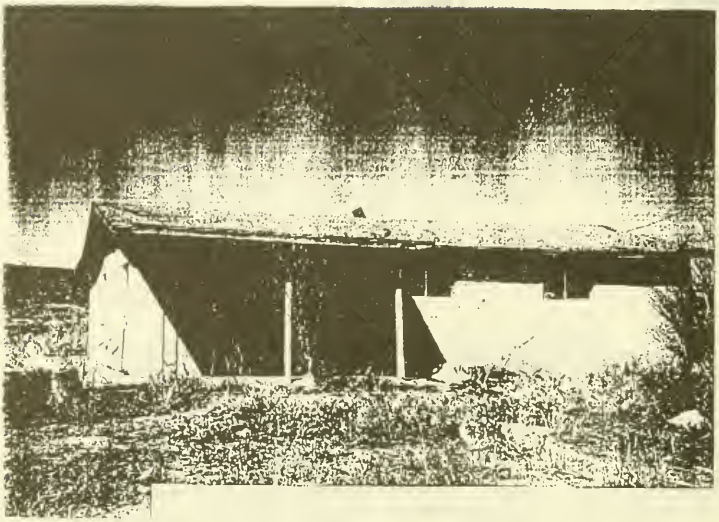
Presently, the cabinet shop staff consists of 4 tribal members. Our cabinet shop is small, new, Indian owned and Indian run, but our goals are big.

Once again, thank you for the opportunity given to the Tsay Cabinets of San Juan Pueblo.

Sincerely,

James Calvert, Supervisor
Tsay Cabinets

San Juan Pueblo



Isleta Pueblo

TUEI

Isleta means "Little Island" in Spanish, but Isleta Pueblo is hardly "little," having and area of 211,002 acres and a population greater than three thousand. Isleta has had a troubled history. When the Pueblo Revolt began, many of the members fled to Hopi settlenments in Arizona, while a number of Isleta people accompanied the Spanish in their retreat to El Paso del Norte. After the rebellion was brought under control, the Isleta people returned to their former home, some bringing Hopi mates and half-Hopi children. When some members of the Laguna Pueblo and the Acoma Pueblo joined the Isleta community in the eighteen hundreds, friction within this hetergeneous society led to internal disagreement over religious and ritual matters. The solution to this conflict resulted in the creation of the satellite settlement of Oraibi. The pueblo today is comprised of two small communities, Oraibi and Chicale, and the main pueblo, Isleta. The language is generally Tiwa, with most people speaking English as well.

Agriculture is the principal occupation of the Isleta people. Additional revenue is derived from land leased to local business concerns and to the United States Government. A high proportion of the population works outside the reservation, but a recent revival of pottery making is giving work to a number of artisans. The Chiwiwi family, which is noted for its high quality work, has created fine products in the traditional style of pottery which are gaining the attention of collectors. Embroidery and jewelry making are also experiencing a revival. Isleta is also known for excellent bread.

The Isleta Pueblo performs several dances open to the public, during June, July and August, as well as September Fair and Christmas festivals. Camping and fishing at Sunrise Lake on the Isleta reservation are popular vacation attractions.

Area: 211,002 acres

Isleta Pueblo

TUEI

National Congress of American Indians

Executive Committee

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W. Ron Allen
Jamestown S'Klallam Tribe

First Vice President
Ernie Stevens, Jr.
Oneida Nation of Wisconsin

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Portland Area
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Spokane Tribe

Sacramento Area
Juana Majel
Pauma Band of San Luiseno

Southeast Area
James Hardin
Lumbee Tribe

Executive Director
JoAnn K. Chase
Mandan, Hidatsa & Arikara

[illegible] Massachusetts Ave., NW
[illegible] Floor
Washington, DC 20036

Prepared Statement of W. Ron Allen, President

National Congress of American Indians

Before a Joint Hearing of the Committee on Indian Affairs and

The Committee on Banking, Housing and Urban Affairs

Regarding Title VII of HR 2406

"The Native American Housing Assistance and Self-Determination Act"

20 June 1996

Introduction

Good morning Chairman D'Amato, Chairman McCain, and distinguished members of the Committee on Banking, Housing and Urban Affairs and the Committee on Indian Affairs. I am W. Ron Allen, Chairman of the Jamestown S'Klallam Tribe of Washington State and President of the National Congress of American Indians (the "National Congress" or the "NCAI"). As the oldest, largest, and most representative Indian advocacy organization in the United States, the National Congress is dedicated to the exercise of tribal sovereignty and the continued viability of tribal governments.

The U.S. Congress is now considering legislation that would significantly reform the nation's public housing laws and the manner in which public housing is financed and developed. In the House version of public housing reform legislation (HR 2406) there is an Indian housing title, Title VII, which the member tribes of the National Congress have specifically endorsed. [1] Though by no means perfect, Title VII makes significant strides in revamping Indian housing in several positive ways. In March, 1996, House Subcommittee on Housing and Community Opportunities Chairman Rick Lazio introduced the "Native American Housing Assistance and Self-Determination Act of 1996". This legislation was subsequently added to HR 2406 pursuant to an amendment by Representative J D. Hayworth and now appears as Title VII of the House bill

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[1] Resolution TLS-96-010C - A Resolution Supporting the Native American Housing Assistance and Self-Determination Act of 1996 (Title VII of the U.S. Housing Act of 1996).

There is no counterpart to Title VII in the Senate version of public housing reform legislation and we urge these committees to insert similar Indian housing language or accede to the House as far as Indian housing is concerned.

Before moving on to the specifics of Indian housing and Title VII, I want to note that Chairman Lazio and his staff should be applauded for their efforts to consult with Indian tribes from around the nation. The efforts displayed by Chairman Lazio, outside the normal purview of the Senate Committee on Indian Affairs or the House Resources Committee, are rare indeed and we encourage all legislators to follow the leadership of Chairman Lazio in this regard. On behalf of the National Congress and our member tribes I am pleased to appear before you to present the Statement of the National Congress regarding Title VII of HR 2406, the "Native American Housing Assistance and Self-Determination Act of 1996".

II. FUNDAMENTAL FEDERAL INDIAN LAW AND POLICY

Any discussion of federal Indian housing policy must be grounded in fundamental principles which inform federal Indian law and policy. Since the earliest days of our republic, Indian tribes have been considered sovereign, albeit domestic, nations with separate legal and political existence. Along with states and the federal government, tribal governments represent 1 of 3 enumerated sovereign entities mentioned in the U.S. Constitution. As a result of Constitutional mandate, hundreds of duly-ratified treaties, a plethora of federal statutes, and dozens of seminal federal court cases, it is settled that Indian tribes have a unique legal and political relationship with the United States. This relationship is grounded in the political, government-to-government relationship and is not race-based. [2]

In return for vast Indian lands and resources ceded to the United States, the federal government made certain promises to Indian tribes including the protection of Indian lands from encroachment, as well as promises to provide in perpetuity various goods and services such as health care, education, housing, and the continued right to self-government. In addition to inherent sovereignty therefore, tribes benefit from the federal government's "trust responsibility" to them. This responsibility eludes simple definition but is grounded in the oversight and trusteeship of Indian lands and resources by the United States. Using analogous common law principles of trusteeship, the trust responsibility has been determined by federal courts to be similar to the highest fiduciary duty owed a beneficiary by a trustee.

III. INDIAN HOUSING: THE CURRENT SCENARIO

Compared to all other sectors of the American populace, American Indians and Alaska Natives rank at or near the bottom of most social and economic indicators. The great majority of the 557 federally-recognized Indian tribes' populations are characterized by severe

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[2] *See Morton v. Mancari*, 417 U.S. 535 (1974).

unemployment, high poverty rates, ill-health, poor nutrition and sub-standards housing. In 1989, the average unemployment rate in Indian country was 52%, and by 1990 the rate had jumped to 56%. [3] The 1990 Census shows the percentage of Indian people living below the poverty line is 31.6%, or three times the national average. With regard to housing statistics, there is a deficit of the actual and demonstrated need for safe, decent and affordable housing in Indian country over and above currently available housing stock. [4]

It is against this background that numerous initiatives are being undertaken to lessen the dependence of Indian country on federal largesse, and to stimulate tribally-based development. For example, efforts are ongoing to encourage savings, to generate capital investment, and to bring employment opportunities to reservation economies. Both public initiatives, such as federal legislation granting tax incentives to new businesses locating on-reservation, as well as private efforts have been attempted with some success. A fundamental lack of physical infrastructure is but one problem hindering tribal development efforts. [5]

In addition to wage, tax and investment incentive legislation introduced by Chairman McCain, there are other initiatives designed to ameliorate infrastructure problems including the bi-partisan "Native American Financial Services Organization" legislation which would enable tribal communities to make use of scarce federal dollars in tandem with private funds to build private sector and tribal capacity to provide housing, infrastructure, and economic development financing. The financial framework envisioned by the NAFSO bill could work together with Title VII to bring much-needed resources and hope to tribal communities.

As noted, there is a clear and definable need for safe, decent, and affordable housing in Indian country. The federal government stands in a unique position with regard to tribal housing and development efforts and can and should assist in providing housing and the wherewithal for

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[3] *See generally* "1990 Census of Population - Characteristics of American Indians by Tribe and Language", U.S. Department of Commerce, Economic and Statistics Administration, Bureau of the Census.

[4] In addition to lack of housing units, fully 18% of reservation households do not have complete kitchen facilities, including a sink with piped water, a range or cookstove, and a refrigerator. This sharply contrasts with the national rate (1%). For American Indians access to toilets, showers, baths, and sinks with hot and cold running water is considered a luxury, and access to potable water is similarly below average. *See generally* "Still Living Without the Basics, by the National Rural Community Assistance Program (RCAP)" U.S. Department of Agriculture, 1995.

[5] *See* "Report on the Unmet Physical Infrastructure Needs on Indian Reservations Nationwide", by the National Tribal Development Association and Eagle Associates, December, 1995; *see also* "Indian Investment and Employment Tax Incentives --- Building a New Highway to Indian Country for Private Sector Business and Jobs", Michael J. Kurman, Fed Bar and New Journal, Vol. 41, No. 8, Sept 1994, p. 578. Committee on Indian Affairs Chairman McCain has been instrumental in leading the way by introducing a series of wage, tax and investment incentives that would accomplish many of these goals.

Indian tribes to finance and develop their own housing stock The housing need has been quantified --- there is at minimum a demonstrated need for 90,000 new or rehabilitated housing units in Indian country. [6] The assessment cited is 6 years old and it is safe to say that the current need far surpasses 90,000 units.

Federal Indian housing law and policy cannot be considered in an appropriations vacuum. The current appropriations debates continue to emphasize elimination of annual deficits in federal spending. These efforts have had significant impacts on federal housing programs generally and on Indian housing programs in particular For instance, in the FY95 rescissions bill the Congress reduced funding for new housing development by 28%. The legislation under consideration would authorize some $650 million dollars for the operation and maintenance of existing housing stock, and would attempt to use federal dollars to leverage private sector housing capital to finance the development of new housing units.

Under current federal Indian housing law and policy, Indian Housing Authorities (IHAs) are the main providers of housing in Indian country. These entities are quasi-independent agencies created under the authority of tribal governments to administer housing programs. IHAs, working in tandem with HUD in administering housing programs, currently manage 75,000 units for some 270,000 of the 600,000 Indians that live on or near reservations.

IV. TITLE VII AND ITS PROBABLE IMPACTS

A. Overview of Title VII

Title VII of HR 2406 holds the promise of housing reform, improvement, and greater flexibility in financing and developing housing in Indian country. For the first time ever, Title VII recognizes and is grounded in the federal trust responsibility and requires the U.S. to assist in providing affordable housing to American Indians and Alaska Natives The legislation has as its goal the assistance of tribes in achieving a socio-economic status "comparable to their non-Indian neighbors".

Title VII provides a legislative vehicle for Indian housing separate from public housing, recognizing the uniqueness of Indian tribes and tribal populations This legislation also reflects the recognition that HUD programs are urban-oriented and often unreflective and ill-equipped to deal with the unique needs of tribes and their geographical differences By separating Indian from public housing, some of the historic inequities that plague Indian housing can be remedied.

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[6] *See generally* Bureau of Indian Affairs' Housing Inventory Needs Assessment, 1990.

[7] For example, the Veterans Department's "Native American Direct Home Loan Program" has witnessed 91 loans made --- with 7 to Indian tribes, 83 to native Hawaiian groups, and 1 to an America Samoan group.

Reflecting the trend toward greater self-reliance, Title VII allows for greater self-determination by cultivating the creation of local housing plans by tribal governments who know best what the local housing priorities are and how best to deal with them.

The various programs and titles that have been developed over the years, and with which tribal housing specialists are familiar, would be swept away with the enactment of Title VII. The following programs currently in effect would be terminated by this legislation:

- Public housing programs under the U.S. Housing Act of 1937;
- New commitments for rental homes;
- Youthbuild Rental Assistance;
- Home Program Assistance; and
- Housing Assistance for the Homeless.

Building on successful tribal self-governance models, Title VII of HR 2406 seeks to provide housing assistance in the form of block grants directly to Indian tribes or their "tribally designated housing entities" ("TDHEs"). By providing housing money directly to the tribal governments or their designees, Title VII recognizes that tribal governments are the closest to American Indians and Alaska Natives and are best situated to recognize and deal with the needs of their own members. Title VII is consistent with other federal initiatives that recognize that in recent history, federal money appropriated for the benefit of Indians has actually served the needs of federal bureaucracies rather than the needs of the tribes. Faced with ever growing responsibilities, tribal governments must have the resources necessary to fulfill their fundamental responsibilities to their members.

Title VII takes aim at the acute shortage of affordable housing in Indian country and determines that the federal government should assist in providing affordable housing and in the development of private housing financing mechanisms. "Affordable housing" is defined in Section 722 to include housing modernization, new home construction, housing services such as energy efficiency studies, housing management services, crime prevention and safety, and model housing activities designed to carry out the purposes of Title VII

B. Direct Block Grants to Indian Tribes

Section 702 of Title VII contains Congressional findings which and recognize the federal responsibility to promote the welfare of the United States as a whole, a recognition that the United States and the governments of Indian tribes have a unique relationship, and that there is a unique Federal responsibility to Indian people.

Authority to administer federal funds in block grant form is provided in Section 711(a) which states that the "Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe." The Secretary can only make such grants if the tribe submits a "local housing management plan" ("LHMP"). This plan contains tribal blueprints for the operation and

maintenance of existing housing units, modernization and rehabilitation, and development of new units. By having tribal priorities reflected at the tribal level, more accurate targeting and use of funds can be achieved. The tribe, not the federal government, will determine local housing priorities. In this way, national housing strategy regarding affordable housing can be attained through the development and implementation of locally-driven tactics and priorities.

In keeping with the government-to-government relationship, Title VII provides that only tribes can determine which entity (tribe or a TDHE) will be the recipient of the block grant. We support such a provision as demonstrating appropriate deference to sovereign tribal governments, but also as it allows tribal governments the necessary flexibility to administer these funds. The administrative capacity of tribal governments differ depending on available resources, history and experience with housing programs, and a host of other factors.

In its current form the requirements that a tribe must comply with are burdensome, lengthy and expensive, and we urge the committees to develop a more streamlined version of compliance with the LHMP. Most tribes, and especially smaller tribes, have scant resources to devote to compliance with the LHMP requirement We support the provision of the bill that provides for Secretarial waiver of the LHMP requirement, especially as regards small and needy tribes and their inability to complete plans and compete for housing funds. Specifically, Section 712(f) provides that for small tribes, the Secretary shall establish requirements which "shall waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing authorities."

Based on the tribes' experience with federal rulemaking, we encourage the committees to consider language that will bring the tribes into the rulemaking process and to use negotiated rulemaking wherever possible.

C. Allocation Formula for Block Grants

One of the main areas of concern expressed by our tribes centers on the allocation formula and how it will be developed and administered. Section 711(c) provides that the amount of the block grant is to be determined by an "allocation formula" to be developed by the Secretary. Section 741 involves the annual allocation formula for grant funds. Section 742 mandates the Secretary to establish a formula based on factors that reflect the need of the tribes for assistance for affordable housing activities. Among those factors the Secretary must consider are the following:

(1) the number of low-income housing units owned or operated at the time pursuant to a contract between an IHA and the Secretary;
(2) the extent of poverty and economic distress in the area; and
(3) other "objectively measurable conditions".

The nature and degree of problems hindering reservation economies and the development of housing run the gamut from a lack of capital, to poor infrastructure, to low income levels --- all of which may combine and result in exacerbated housing conditions in Indian country. The allocation formula must reflect not only geographical and income differences but population densities, tribal administrative capacity, and other factors adduced by the tribes themselves as warranted in developing the formula. Small and needy tribes must receive assurances that their housing programs will receive fair and equitable allocations in order to continue the provision of housing for their members.

We are encouraged by the fact that the formula will be determined through negotiated rulemaking involving Indian tribes, IHAs, and HUD, and we hope that a fair and efficient allocation formula can be achieved that will make optimal use of federal funds and at the same time address the housing crisis in Indian country.

D. Public-Private Partnerships

Title VII recognizes the value and benefit of leveraging the muscle of private sector institutions and financing, and mandates that any recipient of grant funds under this title must make "all reasonable efforts...to maximize participation by the private sector including non-profit organizations and for-profit entities" to implement the approved LHMP. Such mandate not only seeks to harness the power of the private sector, but is inclusive in nature providing that other groups such as non-profit organizations take part in the new housing framework. In such a way, tribes with little capacity can call on these groups to help them transition from the current HUD-driven system to the tribally-driven system envisioned under Title VII.

E. Appropriations Issues

It is a rare occasion indeed when Indian programs receive the federal funding required to fulfill the needs of tribal members. Historically, Indian funding has lagged far behind that of non-Indian funding and this gap continues to grow. The gap has widened despite heavier burdens placed upon tribal governments to deliver basic services to their members. The inadequacy of federal funding is especially true in the current budgetary era when the Congress and the nation have resolved to reduce and eliminate federal deficit spending.

Nonetheless, Title VII provides $650 million to be authorized for appropriations for fiscal years 1998 through 2001. Title VII also authorizes some $400 million in loan guarantees on nots or other obligations issued by tribes or their TDHEs. It should be remembered that what Title VII is attempting to do is consolidate the categorical grants in the current housing policy into one large grant, with resultant flexibility in setting priorities. We urge full funding of Title VII if it is to be successful in Indian country.

F. Recipient Non-Compliance and Statutory Remedies

Title VII also provides guidance regarding repayment in case of non-compliance by a recipient If grant funds are used for affordable housing activities and the resultant housing does not comply with the title, the Secretary must reduce future grant payments on behalf of the grant beneficiary by the amount of the grant, or must require payment to the Secretary of equal amount The bill provides a graduated series of remedies that the Secretary must engage in. The Secretary must take certain actions if, after notice and opportunity for hearing, a determination is made that substantial failure to comply has occurred. Those actions are the following:

(1) terminate payments under this title to the recipient;
(2) reduce payments under this title to the recipient;
(3) limit the availability of payments to other programs, projects or activities "not affected by such failure to comply";
(4) in case of 752(a) noncompliance, the Secretary shall replace the TDHE.

Subsection (b) provides that if the non-compliance is "technical", not willful, the Secretary may provide technical assistance to increase the capacity to administer the grant funds. Subsection (c) provides for possible referrals for civil actions. The Secretary may refer the matter of non-compliance to the U.S. Attorney General, who may bring an action (through the U.S. Attorney) in federal district court. Subsection (d) provides that any recipient receiving notice of termination, limitation, or reduction of payments under this title may seek review in the appropriate Circuit Court of Appeals seeking review of the Secretary's actions.

Our tribes have expressed serious concern over that portion of the bill that permits federal court review in civil actions in cases of alleged non-compliance. Traditional notions of tribal sovereignty and sovereign immunity would serve to deny jurisdiction over conflicts involving tribes. Our tribes have also expressed concern over that provision of the bill that provides in rare and extreme cases, for Secretarial replacement of a TDHE if certain conditions are met. In fact, the title requires tribes, as a condition of receiving grant funds, to agree that the Secretary may require a replacement TDHE. As a condition for replacement, there must be a Secretarial determination that the recipient "has engaged in a pattern or practice of activities that constitutes substantial or willful non-compliance " The replacement option is not unilateral, however, as the title provides for a joint tribal-Secretarial mutually-agreed choice of replacement

G. Loan Guarantees

As part of its private market orientation, the title provides authority for loan guarantees and requirements for them as well. Title VII provides for such loans provided sufficient appropriations are made by the Congress. If so provided, the Secretary may guarantee notes or other obligations issued by tribes or TDHEs to finance affordable housing. Such guarantees are

authorized only if the tribe or the TDHE "has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing" otherwise. The amount of the loan guarantees are limited on a cumulative basis to five times the grant allocation

There are a number of normal security and repayment terms for loan guarantee issued by HUD including requiring a tribe or housing entity issuing such notes or obligations to

(1) enter a contract for repayment;
(2) pledge any grant for which issues may become eligible under this title,
(3) provide evidence that issuance and guarantee is within the financial capacity of the tribe, and not impair the tribe's ability to use grant funds;
(4) furnish "such other security as may be deemed by the Secretary in making such guarantees

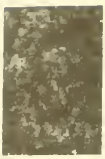
CONCLUSION

Chairman D'Amato, Chairman McCain, Title VII can provide the adjustments to the Indian housing framework to foster greater local autonomy, provide tribal government flexibility in administering housing programs, and in tapping private sector funding to finance housing in Indian country.

The current deficit in housing stock must be remedied and Title VII is a big step in the right direction. For many years Indian tribal governments have advocated for direct federal funding in order to eliminate waste and bureaucratic inefficiency, and to allow the tribal governments to set and address priorities. Title VII begins this process in a thoughtful way and deserves serious attention by the Senate.

Our tribes have endorsed the legislation and the NCAI on several occasions has gone on record to point up those provisions of the bill we felt needed work, and I have reiterated those perceived weaknesses today. I again thank you for the opportunity to appear before your today and would be happy to answer any questions you may have.

* * *



National Congress of American Indians

Executive Committee

President
W. Ron Allen
Jamestown S'Klallam Tribe

First Vice President
Ernie Stevens, Jr.
Oneida Nation of Wisconsin

Recording Secretary
S. Diane Kelley
Cherokee Nation

Treasurer
Gerald (Gerry) E. Hope
Mohegan Indian Corporation

Area Vice Presidents

Aberdeen Area
Purcell (Bud) Mason
Three Affiliated Tribes

Albuquerque Area
Joe Garcia
Ohkay Owingeh

Anadarko Area
Merle Boyd
Caddo Tribe

Billings Area
John Sinclair, Sr.
Chippewa Cree Tribe

Juneau Area
Edward K. Thomas
Tlingit Haida Central Council

Minneapolis Area
Margie Anderson
Mille Lacs Band of Ojibwe

Muskogee Area
Rena Duncan
Chickasaw Nation

Northeast Area
Ken Phillips
Oneida Nation of New York

Phoenix Area
Arlan D. Melendez
Reno Sparks Indian Colony

Portland Area
Bruce Wynne
Spokane Tribe

Sacramento Area
Jason Siegel
Pauma Band of San Luiseno

Southeast Area
James Hardin
Lumbee Tribe

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RESOLUTION TLS-96-010C

Title: **SUPPORT FOR THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996 (TITLE VII OF THE U.S. HOUSING ACT OF 1996)**

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns, and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the above Act strengthens trust responsibility for the first time ever in Indian housing legislation, stating that "there exists a unique relationship between the government of the United States and the governments of Indian tribes and a unique federal responsibility to Indian people" and "providing affordable and healthy homes is an essential element in the special role of the United States in helping tribes and their members to achieve a socio-economic status comparable to their non-Indian neighbors;" and

WHEREAS, the above Act will allow for greater self-determination through the development of local housing management plans which will allow the steeling of tribal housing priorities; and

WHEREAS, the above Act separates legislation for Indian housing from public housing, thereby recognizing Indian people as distinct and unique from urban and suburban America.

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians does hereby support Native American Housing Assistance and Self-Determination Act of 1996; and

BE IT FURTHER RESOLVED that the National Congress of American Indians and the National American Indian Housing Council will continue to identify issues and concerns with this legislation to present to Congress as it moves through the legislative process and develop a political strategy to successfully move such legislation.

CERTIFICATION

The foregoing resolution was adopted at the 1996 Mid-Year session of the National Congress of American Indians, held at the Adam's Mark Hotel at Williams Center in Tulsa, Oklahoma, on June 3-5, 1996 with a quorum present.

W. Ron Allen

W. Ron Allen, President

ATTEST:

S. Diane Kelley, Recording Secretary

Adopted by the General Assembly at the 1996 Mid-Year session held at the Adam's Mark Hotel at Williams Center in Tulsa, Oklahoma on June 3-5, 1996.

National Congress of American Indians

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Confederated Colville Tribe

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Northeast Area
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Sacramento Area
Juana Majel
Pauma Band of San Luiseno

Southeast Area
James Hardin
Lumbee Tribe

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8 July 1996

Honorable John McCain
Chairman - Committee on Indian Affairs
United States Senate - 838 SHOB
Washington, D.C. 20510

Dear Chairman McCain:

Thank you for your letter of 20 June regarding Title VII on Native American Housing Assistance contained in the public reform legislation now pending in the Congress (HR 2406). I am pleased to submit the following answers to the questions contained in that letter.

Q.1. The legislation requires that regulations be promulgated under negotiated rulemaking procedures within one year of enactment. Given your experience with negotiated rulemaking on the 1994 self-determination and self-governance amendments, is the one year period enough or too much time?

A.1. As I mentioned in my statement to the Committee, negotiated rulemaking is the preferred manner of fleshing out the enabling regulations to implement federal law concerning Indian tribes. As opposed to formal notice and comment rulemaking which often cannot fully imbue the resulting rules with the nuances of tribal governance, bringing Indian tribes into the negotiations provides added flexibility and ensures a result more in line with the needs of Indian tribal governments. My own experience with negotiated rulemaking leads me to this conclusion and we support negotiated rulemaking in every situation where it is feasible. As far as the time frames provided in Title VII, one year may be enough time if the requirements and burdens on tribes are lessened. That is, the obviously is a period of transition envisioned in this act that will require significant resources and time devoted by tribes to building the capacity to administer block grants. The regulations that will be promulgated must take this into account so that the act will be implemented in a way that enhances Indian housing.

Q.2. Would you support fully exempting all Indian construction projects from the requirements of the Davis-Bacon Act? Why ?

A.2. Davis-Bacon requires payment of the prevailing wage on all construction projects benefitting from federal funds. In Indian country for a variety of reasons, Davis-Bacon has had mixed results on employment, income, and perhaps most importantly on the construction of solid, quality, housing stock. It is widely held that the act has resulted in artificially-inflated construction costs on federal projects. In some instances, this inflation amounts to one-third (1/3) the cost of the housing unit. In an era when federal funds for Indian programs are increasingly scarce, consequences of this type are no longer acceptable. As you know, Mr. Chairman, attracting and maintaining solid employment opportunities to the reservation is a difficult task. Built-in inefficiencies such as Davis-Bacon make this task even harder by lessening the competitive advantage some tribes have when compared to surrounding markets. Tribal governments must have the freedom from government restrictions to energize their moribund economies. Forcing higher wage levels on tribes is counterproductive and in the end destructive to tribal economies and housing conditions. We would support an exemption from Davis-Bacon for all Indian housing projects, but are fully aware that Title VII could be derailed unless Davis-bacon remains part of the legislative scheme.

Q.3. In what specific ways would you want the Senate to simplify the plan requirements in Title VII in order to avoid the costs to tribes you mention in your testimony?

A.3. The Local Housing Management Plans should be brief descriptions of the tribe's existing or planned housing blueprint, and not be detailed to the extent that a tribe will be hobbled by the very blueprint it provides to the Secretary. Part of the underlying problems with existing HUD-driven housing plans is that an inordinate amount of energy and money is devoted to complying with a Washington regulation rather than coping with the serious housing problems faced by tribes. If the plan includes the current housing situation; the demonstrated needs of the tribe; and how the tribe proposes to remedy that situation, with the active involvement of the private sector, then there exists a basis to provide block grants to that tribe. Requiring, for instance, that a tribe submit a detailed "5-Year Plan" simply continues the inefficiency and does nothing to resolved the housing crisis.

Q.4. What percentage of tribes are ready to fully assume the responsibilities of administering block grants as proposed by Title VII?

A.4. An exact percentage cannot be ascertained with any kind of specificity. However, by looking to the number of Indian tribes that are already performing similar functions we can see, roughly, those that have the administrative capacity to administer housing block grants in a successful way. There are now about 190 self-governance compacts in effect and being carried out by tribal governments. Many of these tribes, however, have no experience in managing housing programs. Similarly, Indian Housing Authorities are managing housing programs for tribes across the nation. By providing tribes the flexibility to choose a tribally-designated housing entity (which may be an existing IHA), Title VII recognizes that not all tribes have the capacity required to successfully manage a housing block grant. By providing a brief transition period, with the concomitant resources, any new housing regime will ensure that the maximum number of tribal governments will be in a position to administer these block grants with a high degree of success. I would also suggest, Mr. Chairman, that the real question is not how many tribes are "ready to fully assume responsibilities" under Title VII. Rather, the real question is how many tribes can afford the

continued housing system, and what percentage of Indian people now lack adequate housing. Indian tribes have long advocated the direct funding of federal funds, and our tribes have gone on record in support of Title VII, knowing full well that there will be a period of transition and that it will be difficult. It is, in my estimation, necessary to achieve the greater good which is housing for all Indian people --- something most Americans now share and take for granted.

Q.5. You mentioned in your testimony that Title VII eliminates several housing programs that are currently available to tribes. What types of problems do you anticipate that tribes may experience in the immediate term as a result of the elimination of such programs? Do you believe that Title VII will cover the gap created by the elimination of such programs?

A.5. Title VII simply takes the categorical grants contained in current law, and transforms them into one large block grant administered by tribal governments. The tribes themselves know best what the housing needs of their members are and how, given local conditions, such needs can be best remedied. I believe that against the backdrop of challenging fiscal conditions, combining categorical grants into a larger block grant will provide tribes with greater flexibility in meeting their housing needs and enable tribes to set, and accordingly address, their own priorities. This would be a welcome improvement. We have heard some concerns regarding the CDBG program. As you know, this has been a highly successful and popular program with the tribes. Some of our member tribes have expressed a desire to retain CDBG as separate program. Nonetheless, I believe that generally, Title VII will help to facilitate much needed improvements in housing conditions throughout Indian Country by providing tribes greater flexibility in addressing their housing needs.

Should you have additional questions, please do not hesitate to contact me or NCAI Executive Director JoAnn Chase at 466-7767.

Sincerely,

W. Ron Allen
President

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COMMITTEE ON INDIAN AFFAIRS
AND
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
JOINT HEARING

HEARING ON THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996
(Title VII of the U.S. Housing Act of 1996 - H.R. 2406)

TESTIMONY
JUNE 20, 1996

Introduction

Kus'een yo_xat duwasakwak, Lukaxadi a'ya'a_xat, Yeith hit dax nax_sataee Kagwaantaan yadi. Chairman D'Amato, Chairman McCain and members of this joint hearing, my name is Jacqueline L. Johnson, my Tlingit name is Kus'een. I am a Raven Sockeye from the Raven house. I am the Chairperson of the National American Indian Housing Council, and the Executive Director of the Tlingit-Haida Indian Housing Authority located in Juneau, Alaska. In addition, I am a board member of the Alaska Housing Finance Corporation and I was recently appointed to serve on the advisory board of the Community Development Financial Institutions (CDFI) fund.

Chairman D'Amato and Chairman McCain, I appreciate the opportunity to testify today on this important legislation. It is an honor to speak about housing for Native Americans who continue to be among the most poorly housed people in the United States. I also want to thank the staff members of each committee who have worked hard on understanding and adapting this historic legislation. They have constantly solicited our ideas and welcomed our comments. To me this is truly a bill that represents the democratic process and the voice of the people it most directly affects. I am most sincere when I say *"thank you"* to each one of you.

Need Remains Acute

I am proud to be the chairperson of the National American Indian Housing Council (NAIHC), a twenty-two-year old association, that represents approximately 187 Indian Housing Authorities (IHAs)[1] across the United States. Today, IHAs manage about 80,000 units which house some 250,000 persons, and are considered the **major providers** of housing in Indian Country. Today's

[1] IHAs are created under tribal ordinance by tribes with the police powers to create governing entities and by state legislatures in those areas where such powers do not exist. Primarily, IHAs carry out the Department of Housing and Urban Development's (HUD) Indian housing program

IHA managers are becoming vocal, proactive innovators in their search to provide decent, safe, sanitary affordable housing for all their people.

During the past two years, in the wake of federal downsizing and funding cutbacks, NAIHC has encouraged its member IHAs to meet the challenges straight-on, gathering dignity and strength from one another, while learning to speak with a unified voice for their peoples in need. That need, members of this hearing, remains ***acute.***

As I have testified previously before you, the overwhelming, continuing need for housing for Indian peoples throughout the United States threatens the well-being of far too many Native American communities. In states like Nevada, North Dakota, South Dakota, Montana, Arizona, Alaska and Maine, Native Americans are the most impoverished rural people.[2] Chairman D'Amato, in your own state of New York, there are more than 5,500 Native Americans living in rural communities or reservations; almost 20 percent have incomes below poverty.[3]

In Chairman McCain's state of Arizona, which is known for its large Native American population, there are approximately 115,600 Native Americans living in rural communities or reservations; more than 58 percent[4] have incomes below poverty. This is more than double the Black population with almost 24 percent below poverty or nearly twice that of the Hispanic population with almost 30 percent below poverty.[5]

Comparably, the poverty status for rural American Indian/Eskimo/Aleut persons of the total United States is 36.6 percent below poverty, with 43 percent of them children under the age of eighteen. Figures for American Indian rural poverty far exceed the levels found throughout the United States. The percentage of rural people below the poverty level in the U.S. is 12.96 percent, of which 16.67 percent are children under the age of eighteen.[6] The reality of what Native American children and families suffer daily in overcrowded, substandard homes should speak to the heart of every American.

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[2]"State Data Sheets: An Overview of Poverty and Housing Data from the 1990 Census". Housing Assistance Council, Washington, D C., 1994 Comparison of rural population percentages using State Data Sheets. Comparison with Blacks, Whites, Asian Pacific and Hispanics rural populations.

[3]"State Data Sheets: An Overview of Poverty and Housing Data from the 1990 Census". Housing Assistance Council, Washington, D.C., 1994 Comparison of rural population percentages using State Data Sheets. State of New York Characteristics.

[4]"Ibid State of Arizona Characteristics.

[5]Ibid

[6]Ibid Pg. B-2.

Members of this joint hearing, my people remain poor and so is their housing. Current estimates place the need at between 90,000[7] and 125,000 units of new or rehabilitated, renovated or modernized housing. In Indian Country, there are far too many homes without potable running water, toilets, plumbing or waste systems, heat, or electricity. Too many of our people live in homes with no insulation, in need of new roofs and foundations--homes that are pieced together with scrap wood, tin, plywood and cardboard with dirt floors. In fact, Chairman McCain, in the state of Arizona, more than 44 percent of the Native American occupied housing in the rural areas lacks complete plumbing, compared to less than two percent for the white population and three percent for the Hispanic. [8] While this is in your home state, Native Americans throughout the United States lack kitchens and bathrooms - where the residents eat outside and bathe at neighbors' houses.

Time for Change

We must reverse this situation. A great partnership must form. The public and private sector acting *together*, in one great concerted effort, will open the pathway to change. Four months ago, when I testified on this legislation before the House Subcommittee on Housing and Community Opportunity, I gave all these statistics...they have not changed, but we are witnessing the changing of attitudes of those in Indian Country. Tribal leaders and IHA administrators are seeking new ways to build housing. There is a growing proactive, innovative thinking that is taking place among those involved in Indian housing. These are encouraging, positive signs for all our people.

Daily, a growing number of IHAs are actively exploring ways to maximize federal funding. Now, IHAs and tribes are opening dialogues with private sector banks and lenders. They are attending, more than ever before, workshops on alternative housing financing. The Section 184 Indian Housing Loan Guarantee Program, a program Congress created in 1992, has been a motivating factor in getting banks to negotiate with IHAs. Also, the National Strategy for Homeownership--Native American Partners, in which Fannie Mae, HUD, the VA, NAIHC, and other public/private entities are joining together to educate and train IHA staff about homeownership and removing barriers to homeownership on tribal lands, is also having a beneficial effect. In fact, NAIHC's 22nd Annual Convention was held this week. One day was dedicated to the Partners program and, we heard of many fascinating cases of the private sector and IHAs partnering to build housing.

These are all encouraging signs that IHAs and Indian Country are successfully meeting the enormous challenges before them. The Indian housing act under consideration today will help to change the way business is done at IHAs and in Indian Country. It includes many reforms that spring from an NAIHC position paper developed last July. Three major reforms are particularly important to IHAs.

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[7]Bureau of Indian Affairs Housing Needs Inventory. 1992

[8]Ibid.

- At last, there is an Indian housing bill that is for *Indian housing*. We have long sought a bill that separates Indian housing programs from public housing and recognize the uniqueness within Indian Country.

- In addition, a block grant will give IHAs the flexibility to identify local needs and set priorities.

- Indian housing plans will help communities approach housing, comprehensively and holistically--for ***all*** the people on our reservations and in our villages.

These are enormous, positive steps forward for Indian Country.

Chairmen and members of this hearing, Indian people are on the road to self-determination and we need a full partnership with the United States Congress! While we applaud the legislation in its entirety, there are still areas of concern. We respectfully make the following recommendations:

Recommendations

First, the authorized funding level must be at least $900 million. We believe this increase is necessary because Indian housing began receiving federal housing dollars 25 years *after* the rest of the American population. We have never been able to even begin catching up with the massive housing needs of our people. Currently, more than 90,000 new or rehabilitated units are needed in Indian Country. A recent survey of the membership by NAIHC found that there are more than 63,000 Native Americans waiting for IHA mutual help and low rental housing. The purpose of this legislation is to ensure that the IHA needs are seen more clearly and **that the higher authorization for funding is a step in that direction.**

With an increase in the block grant funding level, sufficient funds should be made available to existing small IHAs to ensure that they can maintain their housing stock. Many small tribes and IHAs are concerned that they will not receive adequate funding when appropriations are distributed among all recipients.

Second, NAIHC strongly recommends that the requirements listed for the Local Housing Plan (LHP) be simplified. The legislation describing the LHP is too detailed. As a result, HUD will need to develop lengthy, cumbersome regulations and implement a complex monitoring system. Small tribes and TDHEs will have a difficult time meeting all the requirements. Local control, one intent of Title VII, will be lost as the recipient focuses more on getting a plan approved by HUD than developing one that will meet local needs. We recommend that plan objectives be stated but a description of the actual content requirements should be left to negotiated rulemaking and the statute should make it explicit that requirements of the plan will be adjusted and simplified for small TDHEs.

Third, some further language may be needed to clarify what will happen to the Native American housing program between October 1, 1996 and October 1, 1997 if a public housing reform bill is passed. Assuming the public housing reform bill is effective October 1, 1996 and Title VII is effective October 1, 1997, what provisions will apply to the Native American housing programs until October 1, 1997? This is particularly important if the public housing reform bill that passes Congress repeals the U.S. Housing Act of 1937.

Fourth, please replace the words "in any United States district court" Section 751(c)(2) with the words "in any court of competent jurisdiction". NAIHC believes that the current language denies the recognition of tribal courts and tribal sovereignty. It sets a precedent for hearing cases outside of the tribal court's area even though the violation occurred within its jurisdictional area. The replacement language preserves tribal court's jurisdiction if such a jurisdiction exists.

Fifth, please insert the following language in Sec. 723(c) "RECIPIENT INSURANCE". Indian housing authorities have created a very successful Indian housing self-funded risk pool which provides very competitive prices for fire and extended coverage insurance. NAIHC believes this language will continue to allow IHAs to maximize their insurance dollars.

> Purchase of insurance by recipient - (A) any such insurance so purchased shall be competitively selected; (B) any coverage provided under such policies, as certified by the recipient, shall provide reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibility associated with the conduct of such activities; and (C) notwithstanding any other provision of Tribal, State or Federal law, regulation or other requirement, any line of insurance from a nonprofit insurance entity, owned and controlled by the recipient and approved by the Secretary, may be purchased without regard to competitive procurement."

Native American Financial Services Organization Act (NAFSO). In January, 1995, Chairman McCain, and Senators Inouye, Campbell and Daschle re-introduced legislation creating the Native American Financial Services Organization Act of 1995 (S. 436). (A companion bill, H.R. 2412, has been introduced in the House by Congressman Don Young, Chairman of the Resources Committee.) This legislation creates a technical services organization for Native Americans. NAFSO would provide technical assistance to set up lending institutions at the local level. These institutions, Native American Financial Institutions (NAFIs), would become lenders and servicers at the local level.

The NAFSO legislation will help Native American communities to leverage federal block grant funds to create private fund raising for housing, infrastructure and economic development funding. Native communities desperately need more bank credit and services. In only some areas do traditional commercial banks venture into lending relationships with Native American tribes and individuals. Common obstacles may be - sovereign immunity issues; inapplicability of traditional commercial codes, creditor's remedies, and mechanisms for perfecting a lien; and unfamiliarity with tribal courts and laws. The special trust or other restricted status of Indian lands and small loan sizes make

mortgage lending challenging, time-consuming and unremunerative, according to many traditional financial institutions

NAFSO will advise on methods of underwriting, securing, servicing, packaging and selling mortgages and small commercial and consumer loans. NAFSO also will offer specialized assistance on how to overcome barriers to primary mortgage lending on Indian lands, including issues related to trust lands, discrimination, high operating costs, and inapplicability of standard underwriting criteria.

An especially important role of NAFSO will be to help existing or new financial institutions develop into NAFI's NAFSO will receive federal funding but also solicit investments from private investors, including gaming and non-gaming tribes. NAFSO will fund interested applicants to qualify for federal matching funds to create NAFIs if they can demonstrate (1) a special interest and expertise in serving the primary development and mortgage lending needs of the Native American community it will serve; and (2) endorsement of the Native community.

The two-tier NAFSO/NAFIs strategy will empower local Native communities to help themselves by developing locally-controlled, financial institutions that will increase access to credit and investment capital. Once NAFIs become well established, they will be self-sustaining and not dependent on future federal subsidies for on-going viability. NAFIs also will be able to offer loans which can be resold in the secondary mortgage market to the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation commonly known as Fannie Mae and Freddie Mac. If NAFIs can pool and sell their mortgages to these secondary market participants, the NAFIs' funds will be freed up to make additional loans in their Native communities. Without a secondary market willing to purchase Indian mortgages, commercial lenders and even tribes and Indian housing authorities have been unable to tie up their funds in mortgage loans to Native families.

NAIHC continues to support the enactment of NAFSO and believes it complements and strengthens Title VII.

Important Steps on the Path to Self-Determination

With the realization that HUD's funding is so uncertain, IHAs are preparing for a different way of doing business, acknowledging that they must prepare for a future where federal funding is *not* the only resource. It does not mean that IHAs will not need *any* federal assistance in the future. With the depth of our people's poverty, it will be years before we pull ourselves out of the despair that consumes so many of us. But, we have found our voice, and we are beginning to openly acknowledge that federal assistance is not our only resource. In that acknowledgement we are taking important proactive steps forward to self-determination -- to design alternative funding programs.

In Summary

Chairmen D'Amato and McCain and members of this hearing, NAIHC greatly appreciates all efforts to reform the Indian housing program. The reform is based on an NAIHC Position Paper which has been approved by the Indian housing authorities and tribal leaders. It will strengthen Indian housing and help to lead our people into stronger paths of self-determination in the next century.

Indian housing authorities are proactively exploring new, innovative ways to house their people. Proactiveness is a new found power and one that is growing in strength, daily. This power will carry us proudly forward into the future that must be secure for our children. Nothing matters as much as securing our children's heritage, our culture, and providing safe, decent, sanitary, affordable homes in which our children can grow and learn and mature, until they too complete the full circle of life.

On behalf of all the people whom we serve, NAIHC strongly urges you to amend and then adopt Title VII of H.R. 2406 in conference and encourage all your colleagues to enact it into law as soon as possible. In this time of change, we must move forward and, for Indian Country, it is time to take the first historic step. Thank you.

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NATIONAL AMERICAN INDIAN HOUSING COUNCIL

RESOLUTION 96-01

A resolution regarding the support of the concepts in Title VII of H.R. Bill 2406, the Native American Housing Assistance and Self-Determination Act of 1996, and requesting the U.S. Senate to make specific changes to the Act.

WHEREAS, NAIHC is a nonprofit association of Indian housing authorities (IHAs), representing 189 IHAs; and

WHEREAS, the stated purpose of the organization is to promote advocacy for policy and legislative changes which will favorably impact our primary goal of providing safe, decent, and affordable housing for Indian people; and

WHEREAS, NAIHC has reviewed Title VII of H.R. Bill 2406 passed by the House on May 9, 1996 and supports the following concepts: the separation of Indian housing from public housing; block grant funding to Indian tribes or their tribally designated entities; the recognition of the government to government relationship between the federal government and Indian tribes; the federal government's trust responsibility to provide safe and decent homes to Indian people; the deregulation of HUD; the involvement of tribal representatives in establishing regulations to carry out the Act; the flexibility to Indian tribes to operate their housing programs without HUD interference; continued funding for the Indian home loan guarantee program; and

WHEREAS, NAIHC has continuing concerns with some of the language in Title VII, and revisions to Title VII, attached hereto as Exhibit "A," and made a part hereof, are necessary to enable Indian tribes or their tribally designated entities to successfully carry out their housing programs under the Act.

NAIHC does hereby request the U.S. Senate to make the changes to the Act outlined in Exhibit A.

NOW, THEREFORE BE IT RESOLVED,

1. **That NAIHC does hereby support the following concepts in Title VII of H.R. Bill 2406, the Native American Housing Assistance and Self-Determination Act of 1996:**

the separation of Indian housing from public housing; block grant funding to Indian tribes or their tribally designated entities; the recognition of the government to government relationship between the federal government and Indian tribes; the federal government's trust responsibility to provide safe and decent homes to Indian people; the deregulation of HUD; the involvement of tribal representatives in establishing regulations to carry out the Act; the flexibility to Indian tribes to operate their housing programs without HUD interference; and continued funding for the Indian home loan guarantee program; and

2. That NAIHC does hereby request the U.S. Senate to make the changes to the Act outlined below and in Exhibit A.

   a. Both the definitions of "Indian Tribe," and "tribally designated housing entity," (Section 703) need to be changed to insure that funding is provided to only federally recognized tribes except for:

      1) Alaskan Native villages or regional or village corporations, and

      2) tribes with existing Indian housing authorities recognized by the U.S. Department of Housing and Urban Development as of January 1, 1996. Any other references to state recognized tribes or other groups must be removed.

   b. The Act requires tribes and their environmental officers to assume the statutory responsibilities of federal officials under the National Environmental Policy Act of 1969 and all current and future related HUD regulations. It (Section 715) should not, however, mandate tribal consent to federal court jurisdiction for purposes of enforcing these tribal officers' federal responsibilities.

   c. In addition to properly allowing HUD to suspend or terminate funding for substantial violation of the Act, the bill improperly allows the federal government through HUD to force replacement of tribally designated entities created by tribes under tribal law with replacement entities that must meet with HUD's approval and which shall have a period of life determined by HUD. Language permitting this (Section 752) should be removed from the Act.

   d. The Act continues to fail to expressly and unequivocally state that housing is a federal trust responsibility. This is unacceptable and Section 702 should expressly acknowledge federal trust responsibility for housing.

EXHIBIT "A" TO NAIHC RESOLUTION NO. 96-01

General Comments

1. Change Section 716 to add "and/or their tribal designated entities," at the end of the last sentence of Section 716 (B)(2). It is our understanding that the negotiated rule making applies to the entire Act.

2. The requirements for the Local Housing Plan should be made regulatory and not statutory. The requirements should additionally be simplified and not onerous to Indian tribes or their tribally designated entities.

3. Add language that will ensure that small tribes receive funding sufficient to allow them to continue to operate as a housing entity.

4. The Act should not subject Indian tribes or their tribally designated entities to the jurisdiction of the federal courts. As recognized by Congress through treaties with Indian tribes and their general course of dealing with Indian tribes, Indian tribes are sovereign nations. Tribes must be allowed to select a court of competent jurisdiction within their area.

5. The termination of the 1937 Housing Act should end the era of providing for only those Indian families that the federal government has determined to be low income. This mode of thinking has given Indian people the perception that to qualify for housing one must remain low income. As such, we propose to remove all references to "low income," in the entire Act. The Federal Government has a fiduciary responsibility to provide opportunities for housing for all Native Americans.

6. The Act should have language that protects existing IHA projects under an Annual Contributions Contract with HUD, so that they are not left in limbo.

7. The Act should include language providing for funding for the development and upgrade of streets and access roads to housing projects.

8. All NAIHC 's nine regions should be represented by a minimum of two representatives in the development of the allocation formula according to negotiated rule making.

Specific Comments

SECTION 711 - BLOCK GRANTS - It is our understanding that Community Development Block Grants (CDBG) are not a part of the Act. This is crucial since CDBG funds provide for a tribe's infrastructure needs.

SECTION 712 (F) - PLANS FOR SMALL TRIBES - The definition of "small tribes," should not be based solely on the number of dwelling units provided for either under this title or the United States Housing Act of 1937, but rather should be based on the need for housing.

SECTION 714 - TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS - Indian tribes or their tribally designated entities should not be subject to Davis Bacon wages, Indian tribes as sovereign nations should have the flexibility to establish their own labor rates consistent with the economic conditions on their respective reservations. As such, all references to Davis Bacon wages should be deleted.

SECTION 715 - ENVIRONMENTAL REVIEW - This section must be deleted in its entirety. The National Environmental Policy Act of 1969 is an act of general applicability and as such should not apply to Indian tribes on their lands. Indian tribes are sovereign nations with the power to enact their own laws. Some tribes have enacted their own environmental laws.

SECTION 718 - AUTHORIZATION OF APPROPRIATIONS - Indian country needs at least 1.5 billion dollars appropriated each fiscal year plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor. The housing needs in Indian country were addressed twenty-five years after the housing needs for the rest of the country were addressed.

SECTION 721 - NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES - As stated in the general comments that the Act should provide housing opportunities for all Native American families, all references to "low income," in this section and all other sections of this Act should be deleted. Secretary approval should not be required to provide assistance to families who are not low-income, but rather this should be determined by an Indian tribe under its five year plan.

SECTION 726 - CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS, SECTION 727 - LEASE REQUIREMENTS AND TENANT SELECTION, and SECTION 728 - REPAYMENT - Should be removed from the Act and made regulatory subject to negotiated rule making.

25-516 96 – 7

SECTION 729 - CONTINUED USE OF AMOUNT FOR AFFORDABLE HOUSING - This section should delete the words, "considered assistance under this title and" after the words, "including all reserves not otherwise obligated". Current IHA funds should not be considered assistance under the Act since all such funds have been obligated or reserved to address housing needs.

SECTION 751 - REMEDIES FOR NONCOMPLIANCE - This section should be deleted and made regulatory subject to negotiated rule making.

SECTION 754 - PERFORMANCE REPORTS - This section should be deleted and made regulatory subject to negotiated rule making.

SECTION 755 - REVIEW AND AUDIT BY SECRETARY - This section should be removed in its entirety and replaced with the following sentence: "The Secretary shall at least on an annual basis require an independent audit pursuant to OMB A87."

SECTION 757 - REPORTS TO CONGRESS - This section should be removed in its entirety and replaced with the following sentence: "Prior to submittal, the Secretary shall make available to the recipient the proposed Congressional Report for a forty-five (45) day review and comment period."

SECTION 764 - TERMINATION OF HOME PROGRAM ASSISTANCE - HOME Program funds should not be terminated but rather kept separate. Indian tribes should be eligible for HOME grants on the same basis as States.

SECTION 772 - SECURITY AND REPAYMENT - Subsection (a) and (b) should be removed in their entirety and be made regulatory subject to negotiated rule making. The following sentence should be added to subjection (c): "The Secretary shall not administratively use grant funds provided under this title to guarantee Indian loan guarantee programs."

CERTIFICATION

As the duly appointed Secretary for the National American Indian Housing Council, I hereby certify Resolution 96-01 was approved at NAIHC's 22nd Annual Convention in Washington, D.C., June 19, 1996 with a quorum present. Passed with 125 yes, 12 no, and 5 abstain.

Virginia Kizer, Secretary

Jacqueline L. Johnson, Chairperson

Date: June 19, 1996

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NATIONAL AMERICAN INDIAN HOUSING COUNCIL

RESOLUTION 96-11

A resolution supporting the prompt enactment of the Native American Financial Services Organization Act by the 104th Congress.

WHEREAS, NAIHC is a nonprofit association of Indian housing authorities (IHAs) representing 189 IHAs; and

WHEREAS, the stated purpose of the organization is to promote advocacy for policy and legislative changes which will favorably impact our primary goals of providing safe, decent, and affordable housing for Indian people and employment opportunities to the greatest extent possible; and

WHEREAS, it is imperative to the successful accomplishment of NAIHC's above-referenced primary goals to empower Native American communities to leverage diminishing federal dollars to create private markets for housing, infrastructure and economic development; and

WHEREAS, technical assistance to Indian tribes and IHAs is needed to help coordinate existing federal, state, tribal and private programs and direct funding to finance housing, infrastructure and economic and community development in Native American communities; and

WHEREAS, the Native American Financial Services Organization Act (NAFSO), if enacted, would establish a national organization to provide technical assistance to tribes, IHAs and Native American Financial Institutions (NAFIs), and other lenders to tap into existing programs offered by numerous federal, state and local agencies and private organizations; and

WHEREAS, NAFSO would advise on methods of underwriting, securing, servicing, packaging and selling mortgages on small commercial and consumer loans, and offer specialized assistance on how to overcome barriers to primary mortgage lending on Indian lands, including issues related to trust lands, discrimination, high operating costs, and inapplicability of standard underwriting criteria; and

96-11

WHEREAS, NAFSO will help existing or new financial institutions develop into NAFIs by providing federal matching funds to help the NAFIs expand their lending capabilities; and

WHEREAS, NAFIs will operate in Native communities generating private capital and leveraging federal tribal dollars to meet development needs for home and business mortgages, infrastructure development and other economic development purposes.

NOW, THEREFORE BE IT RESOLVED, that the National American Indian Housing Council does hereby support prompt enactment of the Native American Financial Services Organization Act offering a two-tier NAFSO/NAFIs strategy to empower local Native communities to help themselves by developing locally-controlled, financial institutions that will increase access to credit and investment capital.

BE FURTHER RESOLVED, that the National American Indian Housing Council will continue to identify issues and suggest improvements in this legislation to present to Congress as the legislation moves quickly through the deliberation process to final enactment in the 104th Congress.

CERTIFICATION

As the duly appointed Secretary for the National American Indian Housing Council, I hereby certify that Resolution 96-11 was approved at NAIHC's 22nd Annual Convention in Washington, D.C., June 19, 1996 with a quorum present. Passed by voice vote.

Virginia Kizer, Secretary

Jacqueline L. Johnson, Chairperson

Date: June 19, 1996

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July 3, 1996

The Honorable John McCain
Chairman of the Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510-6450

Dear Senator McCain:

Thank you again for conducting the joint hearing with the Senate Committee on Banking, Housing and Urban Affairs on Title VII, Native American Housing Assistance, of the United States Housing Act of 1996 (HR2406). I was honored to be able to testify before the Committees on this important legislation.

This is in response to your letter of June 20 in which you asked the attached questions.

Please feel free to contact me or Ms. Ruth Jaure, NAIHC's Executive Director, if you have any questions.

Sincerely,

Jacqueline L. Johnson
Chairperson

1 What percentage of tribes are ready to fully assume the responsibilities of administering consolidated block grants as proposed in Title VII?

Response: Those tribes that have self-governing compacts with the federal government (approximately 190[1]) have experience in administering block grants. The IHAs have administered, however, the HUD *housing* programs for tribes and under Title VII are intended to continue doing so. While NAIHC does not know for sure, we assume, that the larger IHAs of which there are approximately eleven[2], are ready to administer a housing block grant. This means almost 85% of the IHAs need time, and possibly technical assistance, to prepare for the change.

As I stated in my testimony, NAIHC strongly believes that a transition period is needed. The legislation becomes effective October 1, 1997 or FY98. The period between now and then will allow IHAs (or TDHEs) to begin preparing for a block grant program. Although tribes and IHAs may not be ready to administer a block grant program now, they can get ready or become prepared in the next year. They are ready, nonetheless, to begin preparing for the change as evidenced by the passage, this month, of NAIHC's Resolution 96-01 and NCAI's Resolution TLS-96-010C. (See attached copies of the resolutions which are in process of being signed.)

2. Would you support fully exempting all Indian construction projects from the requirements of the Davis-Bacon Act? Why?

Response: As you heard from all the witnesses representing Indian Country, Davis-Bacon inflates the cost in development of most projects. The application of Davis-Bacon substantially raises the cost of developing projects some times as much as $25,000[3]. NAIHC's members have long advocated exemption from this requirement.

In addition, application of Davis-Bacon has an impact on the entire economy of many reservations. Tribal Employment Rights Offices (TEROs), entities of tribal governments, regulate employment on most Indian reservations and Native American communities. They determine, for example, if wages should be kept lower than those paid off the reservation in order to increase employment, an agonizing problem on many reservations. Davis-Bacon requires tribal governments to pay higher wages than those set by TERO. The effect, therefore, is to employ fewer people.

The use of Davis-Bacon interferes with the tribal governments abilities to regulate employment and, hence the economy and standard of living in their communities. As a result, tribal sovereignty is undermined and usurped.

---

[1]For FY1997, 190 tribes out of 550 will have entered into annual funding agreements with the Bureau of Indian Affairs. This information was provided by the Office of Self-Governance at the BIA on July 3, 1996.

[2]For the purposes of this response, larger means those IHAs with 1000 or more units.

[3]Figure given to NAIHC by an IHA in the state of Washington on July 3, 1996.

NAIHC supports exempting all Indian construction projects from Davis-Bacon. We are concerned, however, that the housing crisis in Indian Country is so critical and the potential of Title VII to help us address our needs is such an improvement over current programs, that we are reluctant to sacrifice this legislation at this time.

3. Would tribes prefer to develop planning requirements through negotiated rulemaking rather than have specific planning requirements made part of the statute?

Response: Yes. We believe that the legislated requirements for a comprehensive plan should be brief and to the point. Specifics should be negotiated by those who will be most affected - the tribes and TDHEs.

4. What changes would you propose to Title VII to ensure that small tribes are protected by the proposed changes?

Response: Small IHAs (250 units or less) have always stated that they were *penalized* under the current formula distribution for operating subsidy (Performance Funding System). The formula does not take into account their remoteness or isolation and limited resources such as labor, transportation or infrastructure. Consequently, their ability to operate a housing program is hindered due to lack of funding regardless of the efficiency of their operation. Small TDHEs should receive an "equitable" share of the operating subsidy.

5. Do you see any particular problems with consolidating Community Development Block Grant funds for tribes into the single block grant created in Title VII?

Response: Since this is a tribal government program and NAIHC represents IHAs, we will defer answering this question until we have consulted with tribal governments. Although CDBG fits well with infrastructure and housing, it is not NAIHC's place to take a position on this issue at this time.

DRAFT

RESOLUTION TLS-96-010C

Title: **A RESOLUTION SUPPORTING THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996 (TITLE VII OF THE U.S. HOUSING ACT OF 1996)**

WHEREAS,we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS,the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS,the health, safety, welfare, education, economic and employment opportunity and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the above Act strengthens trust responsibility for the first time ever in Indian housing legislation in that it states that "there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people" and "providing affordable and healthy homes is an essential element in the special role of the United States in helping tribes and their members to achieve a socio-economic status comparable to their non-Indian neighbors", and

WHEREAS, the above Act will allow for greater self-determination through the development of local housing management plans which will allow the steeling of tribal housing priorities; and

WHEREAS, the above Act separates legislation for Indian housing from public housing, thereby recognizing Indian people as distinct and unique from urban and suburban America; now

THEREFORE BE IT RESOLVED, that the National Congress of American Indians does hereby support Native American Housing Assistance and Self-Determination Act of 1996; and

BE IT FURTHER RESOLVED, that the National Congress of American Indians and the National American Indian Housing Council will continue to identify issues and concerns with this legislation to present to Congress as it moves through the legislative process and develop a political strategy to successfully move such legislation.

CERTIFICATION

The foregoing resolution was adopted at the 1996 Mid-Year Congress of the National Congress of American Indians, held at the Adam's Mark Hotel at Williams Center in Tulsa, Oklahoma, on June 3-5, 1996 with a quorum present.

W. Ron Allen, President

ATTEST:

S. Diane Kelley, Recording Secretary

Adopted by the General Assembly at the 1996 Mid-Year Conference held at the Adam's Mark Hotel at Williams Center in Tulsa, Oklahoma on June 3-5, 1996.

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July 19, 1996

Chairman Alfonse D'Amato
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, D.C. 20510-6075

This is in response to your letter of July 2 in which you transmitted questions from the Committee regarding the Native American Housing Assistance Act of 1996 (Title VII of HR2406). I am enclosing NAIHC's response in the format requested.

Thank you once again for holding the joint hearing on June 20 with the Committee on Indian Affairs. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jacqueline L. Johnson
Chairperson

NAIHC Responses

Q.1 In your opinion, at a minimum, what should be contained in the housing management plan?

A.1 NAIHC believes that the elements of the housing management plan should be regulatory so that the tribes, IHAs, and HUD can determine what works best. If Congress intends, however, to make some elements statutory we believe that there should be a section on financial resources noting the operational expenses, as it does currently. This section should additionally detail the funding and expenses for existing projects, as well as the new developments. Further, we believe that the plan should require a capital improvement plan but leave the specifics of the content to negotiated rulemaking.

Q.2.a. In your opinion, are the provisions contained in the legislation sufficient to ensure that the Department maintains a limited, but responsible oversight authority?

A.2.a Yes, the oversight authority is adequate and, in some cases, more than is necessary. For example, Sec. 755 "Review and Audit by the Secretary" requires that the Secretary review and audit the TDHE annually which may include sending HUD employees to the site. NAIHC believes this is more than is necessary and the Secretary should require an annual audit pursuant to OMB A87. The OMB audit will determine if the funds have been spent timely and properly. The audit will be performed by an independent, objective agency with the expertise to undertake such a task.

Q.2.b. Should the legislation be modified to include a series of PHMAP-like performance indicators?

A.2.b. No. In fact, the performance indicators in Sec. 754 "Performance Reports" criteria should be removed and left to negotiated rulemaking where all affected parties, tribes, TDHEs, and HUD, can participate. NAIHC believes that performance indicators should be determined by TDHEs and tribal governments with HUD since they are all more knowledgeable in the achievement of such indicators.

Q.3. In your opinion, is it wise to eliminate the eligibility of tribes and IHAs for these programs (HOME, Indian Housing Development, ESG, Drug Elimination and Youthbuild) and spread their funding across the entire universe of tribes and IHAs based on a formula?

A.3 In June, 1996, the NAIHC membership passed a resolution requesting that HOME remain a set-aside so that tribes and TDHEs will have access to the same funds that state governments are able to access. Otherwise, NAIHC believes that a block grant, which will include the other programs referenced above, will increase the flexibility that does not exist now in these programs. We support their inclusion.

Q 4 a What assurances do we have that the Department will institute adequate safeguards protecting federal taxpayers from exposure to liability based on questionable loan practices (regarding Sec. 771 "Guarantee Loans")?

A 4 a. This is a difficult question to answer since NAIHC has no direct control or oversight over HUD. NAIHC can assure you, however, that the Indian community is aware of the need to protect federal tax dollars from abuse. We will also work with HUD to assure that such projections are designed into the program's administration while preserving self-determination.

Q 4.b. Do you believe it is wise policy to allow grantees the authority to pledge funds currently earmarked as operating subsidies for maintenance and upkeep of existing Indian housing dwelling units as collateral for loans of unknown risk?

A 4.b. In any financial proposal, accountability and responsibility for maintaining existing units is part of the feasibility and evaluation by the lender when obtaining future funding. NAIHC believes that there are built-in safety mechanisms to assure that a TDHE or tribe will not jeapordize its current inventory when seeking future funds.

Q 5. In your opinion, would the addition of an administrative cap improve the legislation?

A 5. No. NAIHC does not support the application of an administrative cap. TDHEs are very diverse and the conditions under which they work also very greatly. This requires, therefore, flexibility in the amount of funds a TDHE allocates to administration. For example, the expansive jurisdiction of Alaskan Regional IHAs require the staff to travel great distances every time they visit a village with a housing project. (The Aleutian Regional HA's jurisdiction is 3,000 miles long.) Travel is costly but unavoidable and usually increases during the winter months. In contrast, on the Wind River Reservation in Wyoming, some of the IHAs projects are located near the housing authority or within an hour's drive.

In addition, the Secretary will be able to determine if a TDHE's administrative costs are not in order as IHAs have already established such costs in their current budgets.

Q 6. Are there sufficient assurances that units currently assisted under Section 8 of the U.S. Housing Act of 1937 will be protected under the proposed block grant?

A 6. Currently, there are only 4,500 Section 8 units managed by TDHEs, most of which are located in Alaska and Oklahoma. NAIHC believes that the TDHEs who currently manage these units are sensitive to serving this population and will work to continue this program. It must be noted, however, that such continuation will only be possible as long as there are adequate administrative or operating funds appropriated by Congress that will allow them to properly administer the program.

Q 7.a. Would you agree that Sec. 724(b) should be modified to protect operating and modernization funds that are intended to provide continued affordability and proper upkeep of existing Indian housing units currently assisted under the 1937 Housing Act.

A 7.a Yes, NAIHC agrees that such funds should be protected, however, the modification should not be unduly restrictive because the leveraging opportunities would be lost.

Q 7.b. Are there any other safeguards you can suggest for improving this provision?

A 7.b NAIHC believes that the lender's requirements and evaluation of the financial proposal that will be submitted when applying for the future funds will assure that current inventories are protected and maintained.

Senator Mack's Questions

Q 1 What aspects of the Plan do you think are essential to retain in the law and what could be eliminated or left up to the rulemaking process?

A 1 Ideally, most aspects of the Plan should be left to negotiated rulemaking so that tribes, IHAs and HUD can determine what works best. We believe, however, that there should be a section on financial resources noting the operational expenses, as it does currently. This section should additionally detail the funding and expenses for existing projects, as well as the new developments. Further, we believe that the plan should require a capital improvement plan but leave the specifics of the content to negotiated rulemaking.

Q 2.a. What specific criteria would you add to the formula factors that are not already contained in the legislation to ensure a fair and equitable distribution of federal funds for Indian housing?

A 2.a Report language should state that the developed formula must provide fair and sufficient funding to continue the existence of affordable housing for all IHAs currently assisted including small TDHEs or tribes.

Q 2.b Do you think the process of negotiated rulemaking is a useful mechanisms for developing a formula? If not, what method would you recommend?

A 2.b Yes, it is sufficient. NAIHC has no other suggestions.

Q 3 .a. How do you recommend that this interim period be addressed?

A 3.a In the interim period, IHAs could begin using *some* aspects of the block grant program as they are ready with the ultimate goal of using *all* aspects by the effective date of implementation.

Q 3.b Do you think October 1997 is a realistic or appropriate effective date?

A 3.b Yes, it is realistic and appropriate.

Q 4 Do you believe that there are adequate safeguards in this legislation to protect the federal interest, while still providing sufficient flexibility for local tribal initiatives and community-based decision making?

A 4 Yes, NAIHC believes there is a good balance between protecting the federal interest and self-determination. The legislation is careful to assure accountability while giving tribal governments more local control.

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY FOR
CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

SEP 19 1996

Honorable John McCain
Chairman, Committee on
Indian Affairs
United States Senate
Washington, DC 20510-6450

Dear Mr. Chairman:

Thank you for your letter of September 10, 1996, regarding the identification of certain groups that may be eligible for assistance under the United States Housing Act of 1937.

Your letter requests that the Department confirm that, as of September 10, 1996, the Mowa Band of Choctaw of Alabama Indian Housing Authority (MBCIHA), and those groups that are served by the North Carolina State Indian Housing Authority (NCSIHA) are the only entities that meet all of the following criteria: 1) have entered into a contract with the Secretary pursuant to the United States Housing Act of 1937; 2) have received housing assistance funds within the past five years through the Office of Native American Programs; and 3) are not groups recognized by the United States as Indian tribes.

I can confirm that, according to records available within the Department, the MBCIHA and the NCIHA meet your criteria. In addition, one other group not mentioned in your letter, the Delaware Indian Housing Authority, currently meets them. As you are aware, the Delaware Tribe of Oklahoma will soon be recognized by the United States as an Indian tribe and, at that point, would no longer meet your third criterion.

I hope that you find this information helpful. Please let me know if I can be of further assistance.

Sincerely,

Hal C. DeCell III
Assistant Secretary

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

September 12, 1996

Honorable John McCain
Chairman, Committee on
Indian Affairs
United State Senate
Washington, DC 20510-6450

Dear Mr. Chairman:

Thank you for your letter of June 20, 1996, requesting responses to a series of questions related to my appearance before your Committee and the Committee on Banking, Housing and Urban Affairs. To provide you with the most comprehensive and cogent reply, I will repeat your question and then offer our answer:

1. **Do you agree with the view expressed by many Indian tribes that housing assistance should be provided by HUD to Indians primarily because of a trust relationship based on treaties between the United States and Indian Tribes?**

   A: The answer to this question requires considerable study and review. HUD is not in a position to put forward an opinion which has significant legal and monetary ramifications for the entire government nor is it the appropriate entity to do so.

   We would point out that, heretofore, federal housing programs have not been based on the trust concept and the proposed legislation for a new Indian housing block grant also does not appear to have been developed based on this doctrine.

2. **What are the unique characteristics of Indian housing that would justify separating assistance to Indians from that provided for public housing in general?**

   A: There are significant differences between the public and Indian housing environments including:

   1) the legal status of the Tribal governments which create the Indian housing authorities is different from that of public housing agencies, which operate under state laws;

2) the role the program plays in the overall housing picture. In Indian country the Indian housing program is the primary housing deliverer for the entire community, whereas in the non-Indian environment public housing plays only a relatively small role;

3) on average, the need for Indian housing is much greater than the need for public housing;

4) there are cultural differences which necessitate different requirements on how the programs are administered;

5) the socio-economic conditions found in Indian country differ greatly from the rest of the Nation.

3. **You say you are against repeal of the Brooke Amendment because, without it, tribes will charge higher rents on the few Indian families who can afford it. Now, wouldn't a tribe do this at considerable political risk of corrective action being taken by the Indians themselves in the next tribal election cycle? With all due respect, Mr. Secretary, how is your position different from the old Federal paternalism that said Indians can't make responsible decisions so therefore we in Washington, D.C. have to decide for them? How do you square your opposition to repeal of the Brooke Amendment with your stated support for tribal self-governance?**

A. It is not the Department's position that Tribes will charge a higher rent and we have never stated that as a concern. Quite the contrary, we believe Tribes will have pressure to lower rents causing them to use a greater share of their block grant for operating costs and preventing them from properly modernizing existing units and from building much needed new housing.

We do not believe that this is a question of paternalism. This relates to the fundamental question of how much funding will be available to satisfy the housing needs of Native Americans and whether sufficient funding will be available to insure that the investment the federal government has already made will be protected.

4. **Why does the Administration oppose the position by virtually every Indian Tribe that Indian construction projects should be exempt from Davis-Bacon requirements?**

A. The Administration's position is that all Americans deserve protection from unfair wages on federal construction projects irrespective of whether or not they live on an Indian reservation. The need to stretch federal funding farther should not be borne by individual wage-earners, especially in a group of Americans as needy as Native Americans.

5. **How much does it cost HUD to construct the average HUD-assisted housing unit in downtown Phoenix, AZ? In contrast to that, how much does it cost on the Hualapai Reservation in northwestern Arizona. How much of the Hualapai costs can be fairly attributed to the Davis-Bacon Act?**

A. The maximum total development cost for a 3 bedroom unit in Phoenix is $98,100. At Hualapai it is $106,743 for a similar sized unit. The Department has never contended that housing at Hualapai should be the same cost as that in Phoenix, particularly because there are other factors, such as remoteness, which increase the cost on most Indian reservations.

There is no possible way to assess how much labor would have cost at Hualapai, AZ, if Davis-Bacon was not required.

We should point out that there have been numerous instances where Tribes have complained that Davis-Bacon wage rates were too low.

6. **We're going to hear later from the All-Indian Pueblo Council of New Mexico. The San Juan Pueblo recently announced they used tribal funds to build a house in 55 days for two-thirds the cost of a typical HUD-funded home. They didn't have to import expensive union workers from off their reservation to build it. They used local Pueblos working for a Pueblo construction firm. In other words, without Davis-Bacon and other federal requirements, it was cheaper, better, faster and it provided employment work for Indians.**

(A) Now why, in face of these facts, does the Administration continue to insist on applying Davis-Bacon to Indian projects?

(B) How many more homes could Indian Tribes construct with the $160 million appropriated to HUD this year for new Indian housing construction if tribes did not have to pay Davis-Bacon wages?

A. Under the Indian preference requirements for HUD financed housing, the majority of skilled and unskilled laborers should be Indians, irrespective of Davis-Bacon. Therefore, it is difficult for us to comment on why the local Indian housing authority has not insisted on more Native American laborers in the past.

(A) The facts in this particular instance do not support the contention that housing units were built at lower cost simply because the IHA ignored the Davis-Bacon requirements.

(B) It is not possible to determine the number of units that could have been built without Davis-Bacon.

7. **In Chief Dugan's upcoming testimony, she is going to suggest that Davis-Bacon be eliminated from Title VII. She also suggests that you be authorized to waive Davis-Bacon requirements in cases where a Tribe can prove that Davis-Bacon adds substantial costs to new housing construction. Would you support this?**

A. The Administration's position on this issue was stated in our official testimony.

8. **Why is HUD asking that it have more time to review tribal block grant plan? How much more time do you think is necessary?**

A. The Department has a fiduciary responsibility to insure that federal funds are properly spent. The plan is the only document which will list the manner in which the funds are to be utilized. Furthermore, it is anticipated that the funding cycle will be the same for all tribes. Thus, all plans will need to be reviewed by an increasingly small HUD staff in exactly the same time period. It is simply a question of resources and our desire to properly manage the program. Our request is for an additional 30 days over the proposed legislation.

9. **How quickly can you provide the Committees with the specific changes you suggest, including simplification of the plan requirements and other technical changes?**

A. The technical amendments HUD is seeking were attached to the testimony provided. In addition, we have already provided informal ideas to Committee staff on the simplification of the plan.

Thank you for your continued interest in the Department's programs, and especially your continued support of Native American Programs.

Sincerely,

Henry G. Cisneros

Salt River
PIMA-MARICOPA INDIAN COMMUNITY
ROUTE 1, BOX 216 / SCOTTSDALE, ARIZONA 85256-9722 / PHONE (602) 874-8000

June 18, 1996

The Honorable Senator John McCain
Chairman
Senate Committee on Indian Affairs
838 Senate Hart Building
Washington, D.C. 20510

Dear Senator McCain:

I am writing to you to express the Salt River Pima-Maricopa Indian Community's position on H.R. 2406 - American Indian Housing Assistance and Self Determination Act of 1996. Attached you will find a copy of our Amendments to this bill and our Statement of Position Paper. We respectfully request your consideration of our amendment to your Senate bill.

We are a Self-Governance tribe under Compact with the Secretary of the Interior, for and on behalf of the United States of America, pursuant to the authority granted by Title IV of Public Law 103-413. From our perspective, H.R. 2406 does not allow for the advances in federal policy which are exemplified by the Self-Governance program. We made a request to include a new section be added to the Self Governance Act to allow Self-Governance tribes to secure housing funds under the principles of the Self Governance program.

We strongly recommend that a method to achieve a formula for the distribution of housing funds to tribes be included in the present scope of your bill. The Salt River Pima-Maricopa Indian Community is eager to assume responsibility to meet the ever present needs of our tribal members and we request your sincere consideration of these amendments.

Sincerely,

Ivan Makil

Ivan Makil
President

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

POSITION ON HOUSING AND SELF GOVERNANCE

- The Native American housing bill is an excellent and innovative stride forward in deregulation of the federal bureaucracy and in assisting low income Indian people to obtain decent, safe, and economic housing.

- Some tribes are still totally dependent on the federal bureaucracy and other tribes are moving towards self-sufficiency. This bill provides a unique opportunity for these more dependent tribes to move toward self-sufficiency in housing.

- However, through the mechanism of Self-Governance under Title IV of the Indian self Determination and Education Act, there are tribes who have taken over many or most of the federal programs on their reservations and are well on their way toward self-sufficiency. These tribes are ready, willing and able to go even further toward self-sufficiency in housing than is provided in this bill.

- The Salt River Pima-Maricopa Indian Community is one of the pioneers in Tribal Self Governance. Our Community has been involved in contracting for federal programs and services since 1968. They started with the Buy Indian Program, then contracted services under P.L. 93-638, and were among the first tribes to enter into a Self-Governance Compact with the United states.

- Such tribes have proven that they can deliver services more effectively and efficiently than the federal bureaucracy. Through local control, they can get the dollars and the decision-making right where the needs are, and they can and do provide innovative programs that are specific to the cultural, economic and environmental conditions of the local population. In this way, the Self-Governance Tribes get the most bang for the buck for each federal dollar.

- A necessary next step in Tribal self-sufficiency in housing is to make this bill available to self-Governance tribes through self-Governance Compacts.

Salt River
PIMA-MARICOPA INDIAN COMMUNITY
ROUTE 1, BOX 216 / SCOTTSDALE, ARIZONA 85256-9722 / PHONE (602) 874-8000

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

POSITION STATEMENT

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF DETERMINATION ACT OF 1996

The Salt River Pima-Maricopa Indian Community is a Self-Governance tribe entering into a compact with the Secretary of the Interior pursuant to the authority granted by Title IV Public Law 103-413. With this in mind, our analysis of the current H.R. 2406, while the bill suggests the proposed legislation in general covers the present federal functions regarding Indian housing issues, it does not allow for the advances in federal policy which are exemplified by the Self-Governance Program. A new section should be added to the Self-Governance Act to allow self governance tribes to secure housing funds under the principles of the Self Governance program. We strongly recommend a method to achieve a formula, for the distribution of housing funds to tribes, be included in the present scope of this bill. It has been a long standing goal of this Community to provide safe and sanitary housing for its members. Unfortunately, due to increasing housing costs coupled with the inability of many tribal members to pay due to low income situations, the gap between housing needs and availability continues to grow. We are more than willing to assume responsibility to meet the ever present housing needs of our members. We request your sincere consideration of our request.

PROPOSED AMENDMENTS TO H.R. 2406
AMERICAN INDIAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

By

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
Scottsdale, Arizona

Section 101 (I) (new)

(i) SELF GOVERNANCE TRIBES... Those Indian tribes formally selected by the Secretary of the Interior to participate in the Tribal-Self Governance Project established by Title III of the Indian Self-Determination Amendments of 1987 upon the effective date of this Act shall be exempt from the requirements of Title I, Sections 101(b), 105, and 106 of this Act, and from such provisions of Title IV of this Act; provided, however, that such tribes enter into funding agreements with the Secretary consistent with all applicable provisions of 25 U.S.C. s 458cc(b).

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

June 18, 1996

TRIBAL COUNCIL MEMBERS
Rhonda R. Sweney - Chairwoman
Michael T. Pablo - Vice Chairman
Carole J. Lankford - Secretary
Henry "Hank" Baylor - Treasurer
Donald "Donny" Dupuis
Michael Durglo, Jr.
Mary Lefthand
Wm. Joseph Moran
Elmer "Sonny" Morigeau
Gary Stevens

Senator McCain, Chairman
Senate Indian Affairs Committee

Senator D'Amato, Chairman
Senate Banking Housing and Urban Development Committee

RE: Title VII of the U.S. Housing Act of 1996

Dear Senators:

On behalf of the Flathead Nation, I wish to begin by thanking you for taking time in this short Congressional session to focus on the housing needs of American Indians.

Both Committees represented here have well documented the deplorable housing conditions on America's Indian reservations.

My purpose in providing today's testimony is to offer support for Title VII of the U.S. Housing Act that is approaching mark-up. The Title contains many of the elements that we have been asking for. The Confederated Salish and Kootenai Tribes have practiced "Self-Determination" for many years, including BIA programs and more recently, IHS funds. We feel that the provisions of Title VII further the goal of decision making at the Tribal level.

I would urge the Committee at mark-up to reach a compromise on a reliable appropriation level. With the dramatic changes offered in the legislation, much harm could result from under funding.

Additionally, I would ask for support and consideration for the addition of S.436 (NAFSO) to the Bill. Only by increasing the availability of viable lending institutions to Indian country can we hope to ultimately meet the demands for new Indian homes. NAFSO offers badly needed technical assistance and expertise with a modest appropriation to facilitate the intent.

Finally, we thank you for both Committees continued support for Indian housing. Working together, without total Tribal dependence, we can solve America's Indian housing problem.

Sincerely,

Rhonda Sweney
Chairwoman

SALISH KOOTENAI HOUSING AUTHORITY
OF THE FLATHEAD RESERVATION

June 18, 1996

Senator McCain, Chairman
Senate Indian Affairs Committee

Senator D'Amato, Chairman
Senate Banking, Housing and Urban Development Committee

RE: Title VII of the U.S. Housing Act of 1996

Dear Senators:

The Salish and Kootenai Housing Authority supports Title VII of the U.S. Housing Act of 1996 as a way to complete the initiatives began by HUD over the last eight years.

With this kind of statutory relief from the existing housing law, Tribes and Housing Authorities can work together to solve the growing housing crisis on America's Indian reservations.

A block grant approach with increased Tribal involvement is the right way to focus resources on the existing housing shortage and promotes the kind of comprehensive planning that should make the future brighter for Indians.

The Salish and Kootenai Housing Authority has a commitment to innovative problem solving and has long advocated for the elements contained in Title VII.

Good luck to you on this vital piece of Indian legislation.

Sincerely,

Al Hewankorn, Chairman
Board of Commissioners
Salish and Kootenai
Housing Authority

P.O. BOX 38 • PABLO, MT 59855 • 406-675-4491 • FAX 406-675-4493

THE
NAVAJO
NATION

P.O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1996

Steven J.W. Heeley, Staff Director
Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510-6450

Re: Navajo Nation Position on the proposed Native American Housing Assistance and Self-Determination Act of 1996 (Title VII of H.R. 2406)

Dear Mr. Heeley:

On behalf of the Navajo Nation, America's largest Indian nation, working in conjunction with the Navajo Housing Authority, I continue to express strong support of the concepts found in Title VII of H.R. 2406, the Native American Housing Assistance and Self-Determination Act of 1996. Concerns with the language in H.R. 2406 are outlined in the Navajo Nation Council Standing Committees' supporting resolutions and the Southwest Indian Housing Authorities Association (SWIHAA) resolution and position papers (attached). I respectfully request that the changes requested in the resolutions be made to Title VII of this bill.

The bill continues to undergo revisions at a rate faster than we can come together and take positions. When the Navajo Nation Council Standing Committees and SWIHAA reviewed the then current draft of the bill, subsequent drafts were already in the mail. At the time of this statement, the Navajo Nation was in receipt of the bill after it had passed the House in the week of May 6, 1996.

In addition to the concerns outlined in the supporting resolutions and position paper, the Navajo Nation requests that the following comments on the newest draft, be incorporated to Title VII of H.R. 2406.

1. Title VII must have language which protects Indian housing authority (IHA) projects currently under an Annual Contributions Contract with the Secretary. No projects should be left in limbo as a result of the passage of the bill.

2. Section 715. Environmental Review.

   This section must be deleted in its entirety. The National Environmental Policy Act of 1969 is an act of general applicability and as such should not apply to Indian nations which are sovereign nations with the power to enact their own laws. The

Navajo Nation has a Navajo environmental policy which regulates environmental activities on tribal lands.

3. Section 721. Secretary approval should not be required to provide assistance to families who are not low-income, but rather this should be determined by an Indian nation under its 5 year housing plan.

4. Section 729. Continued use of amounts for affordable housing.

   This section should delete the words, "considered assistance under this title and", after the words, "including all reserves not otherwise obligated,". Current IHA funds should not be considered assistance under the bill since all such funds have been obligated or reserved to address housing needs.

5. Home Grants must be maintained as separate funding source since they are vital sources of funding to tribal governments or their IHA's.

6. Funding must be adequate to meet the infrastructure needs that accompany the development of housing, so vital for community and economic development in Indian Country.

I must emphasize that without the requested changes being made, the Navajo Nation cannot support the bill as currently written.

Please do not hesitate to contact me or Mr. Ken Peterson, Executive Staff Assistant for Housing and Infrastructure, at (520) 871-6352, if you have any questions regarding the Navajo Nation's position on this Bill.

Sincerely,

THE NAVAJO NATION

Thomas E. Atcitty
Vice President

Attachments:

cc: Mr. Chester Carl, Executive Director
Navajo Housing Authority
Ms. Ruth Jaure, Executive Director
National American Indian Housing Council

LAC DU FLAMBEAU
CHIPPEWA HOUSING AUTHORITY
Lac du Flambeau, Wisconsin 54538
Telephone: 715-588-3348

June 27, 1996

Senate Committee on Indian Affairs
Senate Hart Office Bldg. Room 838
Washington, D.C. 20510

Dear Committee Members:

The purpose of this letter is to provide a local response to Title VII of H.R. Bill 2406, the Native American Housing Assistance and Self-Determination Act of 1996 with specific concerns from the Lac du Flambeau Chippewa Housing Authority in Wisconsin. Many of our concerns are also reflected in resolutions submitted by the National American Indian Housing Council (NAIHC), of which the LDF/CHA is an active member.

I appreciated the opportunity of discussing this legislation with a panel of congressional staff on June 17 at the NAIHC annual convention. This type of direct communication and consultation with tribes is essential, and should continue through completion and enactment of this legislation.

The LDF/CHA concurs with Senate staff who suggested "common sense", and to "simplify" language to the extent possible. Other staff described the intent of this legislation as to "remove the shackles" on Indian Housing Authorities. We trust that the shackles will indeed be removed, and not merely replaced with other shackles. To the extent possible decisions should be made by individual housing authorities, and not legislated. Many of the limits, rules, planning and other requirements are nation by nation issues. Maximum flexibility must be given to sovereign Tribal governments to best meet the needs of their people. This is in keeping with "Federal trust responsibility" which in no way can be delegated to State or local governments.

More specifically:

(1) Reference to "low-income" should be changed to "Indian Housing Program", and current mandates, (e.g. the 30% rule for income evaluation) removed or at least relaxed (e.g. 30% as a "rent cap");

(2) Specific language to provide a safety net or weighted average in determining block grant formulas is required to protect many small tribes. (Similarly, we hope Fannie Mae will be encouraged to adopt goals for smaller tribes in rural communities);

(3) "Non-compliance" and "comprehensive planning" requirements should not be in statute. Rather than a "simple" or "common sense" approach, this will only enable bureaucrats to continue to be punitive;

(4) Likewise, "Davis-Bacon" requirements should be deleted. This requirement is a hold-over from Public Housing that applies non-Indian standards to Indian country, and ends up wasting money. The results of Davis-Bacon in Indian Country are that we are "paying Cadillac prices and getting VWs";

(5) "Loan Guarantees" are indispensable to our tribe's support of any new legislation. Access to private sector capital is vital to accelerated home ownership and new construction plans required by our tribe, (LDF reservation population of 1,400 has "Waiting Lists" for housing of over 300 people).

Genuine consultation with tribes must be ensured through the "negotiated rule making" process to determine funding formulas that will ultimately determine the local impact and merit of the block grant formula approach. I have suggested in previous correspondence that "illustrative models" for different size IHA's could be developed now to provide more detailed financial information, and more opportunity for tribes to analyze the changes proposed.

Finally, we appreciate the role and representation we have received from the NAIHC, and from the HUD/ONAP in Washington and Chicago. HUD leadership should be commended for their focus on "customer service" and "empowerment". It will be difficult to change the attitude of many HUD staff. However, nothing less will be required if the spirit of the new legislation is to prevail.

Sincerely,

Steve LaVake
Executive Director

cc: Tom Maulson, Tribal Chairman
David Vetterneck, Chairman, B.O.C.
Ruth Jaure, Director, NAIHC
Dom Nessi, Deputy Assistant Sec., HUD/ONAP, Washington, D.C.
Francis Harjo, Administrator, HUD/ONAP, Chicago, IL
Senator Russ Feingold
Senator Herb Kohl

North Carolina
INDIAN
HOUSING
AUTHORITY

Established by
N.C. General Statute
157
July 1977

August 22, 1996

Phil Baker-Shenk
Legislative Counsel to Sen. John McCain
Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

RE: Senate Public Housing Bill S. 1260, Public Housing Reform and Empowerment Act/House Public Housing Reform Bill H.R. 2406, U.S. Housing Act of 1996

Dear Mr. Baker-Shenk:

As you may or may not be aware, the above-referenced bills are two (2) bills pending in Congress that directly affect the manner and extent of future funding for the North Carolina Indian Housing Authority. As members of the Board of Commissioners for the Authority, we solicit your support for the adoption by the Senate of **House Bill 2406**, the bill proposed by the House that we believe will allow us to continue meeting the housing needs of all tribes in North Carolina.

House Bill 2406 - Title VII proposes to continue for "Maintenance and Operating" subsidies, along with funding for new housing development. The Bill would also allow a preexisting Indian Housing Authority to remain in its current status as an Indian Housing Program.

The emphasis of the North Carolina Indian Housing Authority has been to meet the housing needs of the state-recognized Indian Tribes, i.e., Coharie, Haliwa Saponi, Lumbee, Meherrin, and Waccamaw Siouan. Because the Eastern Band of Cherokees, a federally-recognized tribe, has its own Indian Housing Authority, the tribe is not included in the focus tribes. The Authority is totally federally-funded through the United States Department of Housing and Urban Development, Office of Native American Programs.

ADMINISTRATIVE OFFICES
2125 Sapona Road
P.O. Box 2343
Fayetteville, North Carolina 28302
(910) 483-5073 – FAX (910) 483-2235
TDD 1-800-735-2962

Columbus and Warren County has already been secured for 1996-97 Fiscal Year. Further development after 1997 will not be federally funded unless the Senate approves House Bill 2406 in its presently proposed form.

The Senate and House Conference Committees are currently hammering out recommendations that will be presented to the full committees during the first week of September. Therefore, it is very important that each tribe and organization write and call each Senator and Member of Congress, urging them to support House Bill 2406, as is. For your convenience, please find attached a listing of the House and Senate Conferee Committee Members, and a listing of staff for each committee.

If you have any questions, please contact us at (910) 483-5073. We thank you, in advance, for your support.

Sincerely,

James Brewer/kb

James Brewer, Chairman
N.C. Indian Housing Authority

NATIONAL AMERICAN INDIAN COUNCIL

"serving urban Indian communities and non-federally recognized tribes"

August 28, 1996

Phil Baker-Shenk
Indian Affairs Committee
U.S. Senate
Washington, D.C. 20515

Dear Mr. Baker-Shenk:

The National American Indian Council (NAIC) is a 501-C-3 non-profit organization serving as an advocate for over 600,000 Native Americans living off of the reservation. The people that we represent, unfortunately, suffer from many of the same problems that our people on the reservations suffer: low education attainment, poor housing, poor social conditions and the lack of economic opportunities. It has been bought to our attention that there is a move to make State recognized tribes ineligible for set aside Indian funds from HUD. We are against this move.

Organizations, such as the North Carolina Indian Housing Authority, were established in the 80's in response to the fact that the housing efforts of HUD were not reaching Native Americans satisfactorily and Congress changed this through legislation. Native populations (urban Native Americans and rural/state recognized Native Americans) were included in the legislation. This act enabled thousands of our people to enjoy affordable housing for the first time.

Changing this legislation will mean that our people will once again be left to fend for themselves in their fight to have affordable housing. We ask that you support House Bill 2406 and Senate Bill 1206 which will allow our people to secure the American dream, decent, affordable housing.

If there are questions, please call me at 919-586-4017.

Thank you in advance for your support.

Sincerely,

Barry Richardson

Barry Richardson
President

SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA

RESOLUTION

No. JN-96-98

WHEREAS, the San Carlos Apache Tribe is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984); and,

WHEREAS, the San Carlos Apache Tribe has been reviewing the draft of the Native American Housing Assistance and Self Determination Act of 1996 since its inception; and,

WHEREAS, the San Carlos Apache Tribe also has been involved with Southwest Indian Housing Authorities (SWIHAA) in the review and preparation of position statements in response to the proposed Act; and,

WHEREAS, the San Carlos Apache Tribe has always been concerned that the Indian Housing Authorities are overly regulated by U.S. Department of Housing and Urban Development and totally supports the changes of the proposed Act in recognition of tribal self governance.

NOW THEREFORE BE IT RESOLVED THAT :

1. The San Carlos Apache Tribal Council hereby strongly supports the SWIHAA Position Paper marked as Exhibit A to Title VI (currently Title VII) of H.R. 2406, April 30, 1996 Draft, the Proposed Native American Housing Assistance and Self-Determination Act of 1996.

2. Further, the San Carlos Apache Tribe hereby reminds the United Stated Federal Government of its trust responsibility to Native Americans and to honor and adhere to the Treaties, Executive Orders, Statutes and other signed agreements in its obligation to provide the essential elements of social and economic conditions including housing.

Resolution No. JN-96-98, continued...

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of eleven (11) members of whom nine (9) constituting a quorum were present at a Regular Council meeting hereto held on the 11th day of June 1996, and that the foregoing Resolution No. JN-96-98 was duly adopted by a vote of FOR 6; OPPOSED 0; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954.

Josephine Hozous, Tribal Secretary

Southwest Indian Housing Authority Association
P.O. Box 187, San Carlos, Arizona 85550
(520) 475-2346 (520) 475-2349 FAX

Resolution No. 96-01

Resolution of the Southwest Indian Housing Authority Association Adopting a Position Paper on Title VI (currently Title VII) of HR 2406, April 30, 1996 Draft, the Proposed Native American Housing Assistance and Self-Determination Act of 1996, and Requesting that Congress Make Requested Changes to the Act

Whereas: The Southwest Indian Housing Authority Association (SWIHAA) is a regional association representing forty-seven Indian Housing Authorities (IHAs) in the Southwest region of the United States and is invested with the power to represent the position of its member IHAs; and

Whereas: One of the objectives of SWIHAA is to advocate for the needs of housing for Native American families residing within the jurisdiction of its member IHAs, and

Whereas: SWIHAA has reviewed and intricately examined all drafts of the proposed Native American Housing Assistance and Self-Determination Act of 1996, ending with the April 30, 1996 Draft, and has adopted a position paper on Title VI (currently Title VII) of H.R. 2406, the April 30, 1996 Draft, and such position paper is attached hereto as Exhibit A and made a relevant part hereof, and

Whereas: Revisions to the Act are occurring at a pace faster than SWIHAA can come together to comment on and adopt positions on and as such SWIHAA has not yet had time to comment on the version of the Act passed by the House, but to the extent that the comments in Exhibit A have not been addressed in that version, SWIHAA renews those comments.

NOW THEREFORE BE IT RESOLVED THAT: SWIHAA hereby adopts the Position Paper marked as Exhibit A to Title VI (currently Title VII) of H.R. 2406, April 30, 1996 Draft, the Proposed Native American Housing Assistance and Self-Determination Act of 1996, and further request Congress to make the requested changes to the Act.

CERTIFICATION

The foregoing Resolution was enacted by the membership of the Southwest Indian Housing Authority Association on the 21 day of May 1996, by a unanimous vote in favor and none opposed at a special called meeting held in Phoenix, Arizona.

Patsy M Cohoe, President

ATTEST: Joann Mike, Secretary/Treasurer

Southwest Indian Housing Authority Association
P O. Box 187, San Carlos, Arizona 85550
(520) 475-2346 (520) 475-2349 FAX

EXHIBIT A

POSITION PAPER ON TITLE VI OF H.R. 2406 (April 30, 1996 draft)

May 20-21, 1996

The following are continuing concerns the SWIHAA membership and their respective tribes have on the April 30th, 1996 draft of Title VI of H.R. 2406, the Native American Housing Assistance and Self-Determination Act of 1996.

The SWIHAA membership has the following general concerns regarding the Act:

1. We continue to look forward to working together with the Secretary in issuing regulations implementing the Act a provided for in Section 616. The only change we would make to Section 616 is to add "and/or their tribally designated entities" at the end of the last sentence of Section 161 (B((2). It is our understanding that the negotiated rulemaking applies to the entire Act.

2. A stated before, the requirements for the Local Housing Plan should be made regulatory and not statutory. The requirements should additionally be simplified and not onerous to Indian Tribes or their tribally designated entities.

3. The Act should not disadvantage small tribes in that any funding they receive should be sufficient to allow them to continue to operate as a housing entity.

4. The Act should not subject Indian tribes or their tribally designated entities to the jurisdiction of the federal courts. As recognized by Congress through treaties with Indian tribes and their general course of dealing with Indian tribes, Indian tribes are sovereign nations.

5. The termination of the 1937 Housing Act should end the era of providing for only those Indian families that the federal government has determined to be low income. This mode of thinking has given Indian people the perception that to qualify for housing one must remain low income. As such, we propose to remove all references to "low income" in the entire Act. The Federal Government has a fiduciary responsibility to provide opportunities for housing for all Native Americans.

The following are SWIHAA's specific comments on each section:

SECTION III - BLOCK GRANTS
Community Development Block Grant (CDBG) should be provided for separately and not as a part of the Act. It is crucial to protect CDBG funds as a separate source of funding since they provide for a tribe's infrastructure needs.

SECTION 612 - LOCAL HOUSING PLANS
As stated in the general comments this section should be made regulatory. The plan should be similar to the plan requirements of the Comprehensive Grant Program.

SECTION 612 (f) - PLANS FOR SMALL TRIBES
The definition of "small tribes" should not be based solely on the number of dwelling units provided for either under this title or the United States Housing Act of 1937, but rather should be based on other factors such as population and the need for housing.

SECTION 614 - TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS
We continue to insist that the Indian Tribes or their tribally designated entities should not be subject to Davis Bacon wages. Indian tribes sovereign nations should have the flexibility to establish their own labor rates consistent with the economic conditions on their respective reservations. As such all reference to Davis Bacon wages should be deleted.

SECTION 681 - AUTHORIZATION OF APPROPRIATIONS
We maintain that Indian country needs at least 1.5 billion dollars appropriated each fiscal year plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor. The housing needs in Indian country were addressed twenty-five years after the housing needs for the rest of the country were addressed.

SECTION 621 - NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES
As stated in the general comments that the Act should provide housing opportunities for all Native American families all references to low income in this section and all other sections of this Act should be deleted.

SECTION 626 - CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS, SECTION 627 - LEASE REQUIREMENTS & TENANT SELECTION, and SECTION 628 - REPAYMENT should be removed from the Act and made regulatory subject to negotiated rulemaking.

SECTION 651 - REMEDIES FOR NONCOMPLIANCE
This section should be deleted and make regulatory subject to negotiated rulemaking.

SECTION 654 - PERFORMANCE REPORTS
This section should be deleted and made regulatory subject to negotiated rulemaking.

SECTION 655 - REVIEW AND AUDIT BY SECRETARY
This section should be removed in its entirety and replaced with the following sentence: "The Secretary shall at least on an annual basis require an independent audit pursuant to OMB A87."

SECTION 657 - REPORTS TO CONGRESS
This section should be removed in its entirety and replaced with the following sentence: "Prior to submittal, the Secretary shall make available to the recipient the proposed Congressional Report for a forty-five (45) day review and comment period."

SECTION 664 - TERMINATION OF HOME PROGRAM ASSISTANCE
HOME Program funds should not be terminated but rather kept separate. Indian tribes should be eligible for HOME grants on the same basis as States.

SECTION 672 - SECURITY AND REPAYMENT
Subsections (a) and (b) should be removed in their entirety and should be made regulatory subject to negotiated rulemaking. The following sentence should be added to subsection (c): "The Secretary shall not administratively use grant funds provided under this title to guarantee Indian loan guarantee programs."

Thank you for providing us the opportunity to provide input into this bill which will affect the lives of Native American families.

Testimony Submitted to

Committee on Banking, Housing and Urban Affairs
Committee on Indian Affairs

on Reform of Native American Housing Programs

Submitted by

Syd Beane
Senior Community Development Specialist
Center for Community Change, San Francisco, CA

Lisa D. Harjo
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June 20, 1996

Introduction

Thank you for the opportunity to submit written testimony on the proposed reforms of Native American housing programs. Our testimony pertains primarily to the housing needs of urban, or off-reservation Indians and argues for a small demonstration program targeted to begin to meet that need. It is our hope that such a program will be given serious consideration in the context of the House/Senate conference on H.R. 2406 and S. 1260.

This testimony is jointly submitted by three local organizations and one national organization. American Indian Services (South Dakota), the Denver Indian Center (Colorado) and the Albuquerque Indian Center (New Mexico) are urban Indian organizations that provide social services and engage in community development activities for the benefit of Native Americans in our respective communities. We engage in activities ranging from job training to family and child services to affordable housing development.

The Center for Community Change is a national, non-profit technical assistance provider whose mission is to support efforts by community-based organizations to improve the quality of life in low-income and minority communities in urban and rural areas.

SUMMARY OF TESTIMONY

Our testimony has three main points:

(1) The history of Indians in urban areas is directly related to the lack of development on reservations and the relocation of large numbers of American Indians to the cities through federal initiatives. A majority of Native Americans now live in urban areas, and a significant percentage experience acute poverty and have severe housing needs.

(2) Federal policy has failed to meet the needs of urban Indians, with respect to housing and other critical services. Urban Indians lack the political clout or numbers to access funds available generally to residents of urban areas, and are almost always excluded from programs targeted to Indians on reservations.

(3) We propose the creation of a small demonstration program to strengthen the capacity of urban Indian community development organizations, and to develop affordable housing in urban areas. We wish to make it clear that it is our intent that any such program <u>not</u> reduce the resources urgently needed for affordable housing development in reservation and other areas under the jurisdiction of tribal governments.

HISTORY AND CHARACTERISTICS OF URBAN INDIANS AND URBAN INDIAN ORGANIZATIONS

The history of Indians in urban areas is a consequence of both the lack of development on reservations and the relocation of large numbers of American Indians to the cities in a deliberate attempt to make Indians disappear into the general population and terminate the special federal trust responsibility to Indian people. The Bureau of Indian Affairs program to assimilate Indian people into the general population by relocation moved over 85,000 Indian people from the reservations to urban areas between 1952 and 1962.

The relocation effort was poorly conceived and badly implemented. The American Indian Policy Review Commission Report on Urban and Rural Non-Reservation Indians found in 1976 that:

> "In summary, the process of orienting Indians in their urban environments was much more likely to involve their disorientation. Efforts were made to encourage the migration of Indians by presenting the relocation effort in a particularly attractive light, but these efforts lacked the substantial commitment that would have established Indians more securely in the cities. There was almost no attention given to assisting Indians in overcoming actual barriers. The separation due to language problems was not addressed by any identifiable program. The ignorance of where to look for important services is a problem that continues to this day. The shift from some of the most remote areas to the most densely packed cities proved to be another hurdle. The lack of workaday experience prior to arrival, the racial and cultural barriers and discrimination --all of these were ignored in the orientation process. In some respects, the orienatation policies were designed to leave Indians unnecessarily isolated by scattering them at distances from each other and from their reservations. This was probably the most uncalled for part of the program, and it may have contributed more to the urban disorientation of Indians than any single factor." [pp. 35-36]

From the outset, urban Indians have been neglected by local governments, who viewed their conditions as a federal problem, and by the federal government which encouraged dispersion and assimilation into the general population. For most of this century, urban Indians have been caught between the contradictory impulses of federal policy --supporting economic development on reservations, and assimiliation into the wider society.

The result of this federal policy of urban Indian assimiliation without on-going federal support and a general unwillingness of local government to assume responsibility for the urban Indians is the high rates of poverty among urban Indians. These poverty rates grew worse with an increasing urban Indian

population, which by 1960 included 165,922 urban Indians or 30% of the total Indian population. By 1990, some 897,055 urban Indians comprised 63% of the total Indian population.

The poverty rate for urban Indians (including Indian, Eskimo, and Aleut persons) is significantly higher than for the population as a whole in urban areas. In Denver, 35.9% of urban Indians are poor, in Albuquerque, 28.7% are poor; and in Sioux Falls, 60.6% are poor. In general, the rate in two dozen cities with the largest Indian populations ranges between 20% and 40%. [See attached chart. All figures based on 1990 census data.]

During the 1930's and 1940's, urban Indian organizations developed to respond to the acute needs that were not being met by either the federal or local governments. Initially formed to preserve tribal identity in the urban setting, through social and cultural activities, these organizations began to confront the neglect of the federal government through protest and advocacy in the 1960's.

In 1968, the commissioner of the Bureau of Indian Affairs, Robert Bennett responded to protests through a study that concluded that the federal government needed to be more actively involved in promoting the welfare of urban Indians. "This involvement can be as limited as establishing local citizens advisory groups, or as extensive as organizing urban Indian groups for contracting with the Bureau of Indian Affairs to operate portions of the program." [A Study of the Urban Indian Problems for Commissioner Bennett, 12/31/1968]

FEDERAL FUNDING OF URBAN INDIAN PROGRAMS

President Johnson's National Council on Indian Opportunity created a subcommittee to study urban Indian problems that recommended in 1970 greater sensitivity on the part of existing federal departments to the needs of urban Indians and support for urban Indian organizations.

In 1970, the federal government initiated several demonstrations to support urban Indian organizations. Congress passed legislation that, among other things, funded 58 urban Indian Centers by 1975. Since then, various programs have allowed urban Indian organizations to receive funds to operate various health, job training and other programs.

Despite these initiatives, reservations have received the overwhelming bulk of available federal funds for Indians. In 1975, urban Indians received only $4,661,000 from the Department of Health, Education, and Welfare, compared to $25,000,000 for reservations. None of the major legislative vehicles providing support for Indians on reservations --the Indian Reorganization Act orf 1934, the US Housing Act of 1937, the Indian Self-Determination Act of 1975, the Indian Financing Act of 1974, and BIA funds for

economic housing and economic development-- provide any support for urban Indians or urban Indian organizations.

In 1977, the American Indian Policy Review Commission Task Force on Urban and Rural Non-Reservation Indians asserted for the first time that the basic concept of federal trust responsibility extends to Indians in urban areas, and that this responsibility applies to all federal agencies, not just the Department of Interior and the Bureau of Indian Affairs.

The Urban an Rural Non-Reservations Indians Task Force concluded that:

> "The Indian prople in substantial numbers came to urban areas because of a lack of employment in addition to other social and economic problems existing on the reservation, but have failed to make a desirable transition because of a lack of necessary and sufficient, continued support from the Federal Government, coupled with the indifference and misunderstandings, by and large, existing in the communities in which they have chosen to live . . . That these Indian people, as a result, have become victims of a federal policy which denies services, if not thereby their very existence, while at the same time substantially subsidizing and contributing to an increase in the population of the multi-racial poor . . . That as a result of their situation and without regard to the slow and agonizing judicial process, the Federal Government must recognize the urban and rural Indians' immediate and undeniable needs . . . That the Federal Government must recognize the duality of the American Indian's citizenship and there must be a federal recognition of the trust, protection under the law, and services, the right to which cannot be terminated on an individual basis without specific congressional action against the entire tribe . . . That the need and struggle for much needed services for the urban and rural Indian people has created a national split between reservation and Urban Indians which has been exploited and encouraged by the executive departments for their own selfish purpose whenever it suits them . . . That the Federal Government and the congress must recognize already existing legal provisions provided by Congress with budgetary action to extend services "for the benefit, care and assistance of Indians throughout the United States . . . " [American Indian Policy Review Commission, Task Force Report on Urban and Rural and Non-Reservation Indians, 1976, p. 2]

The 1980's saw a resurgence in efforts to fund urban Indian programs and organizations, including new funding for Indian health clinics in cities. Despite the diversity of federal funding and development of service specific Indian organizations, however, the social problems of urban Indians continued to be the worst among all urban groups. And, of course, all funds for social services were dramatically reduced during the 1980's. A very significant portion of the urban Indian organizations funded in the 1970's were

dissolved in the 1980's because of a lack of resources. While urban Indians have sought better relationships with local governments, the vast majority of what little funding exists for urban Indian organizations is available through the federal government.

The urban Indian community received and receives virtually no federal support for either affordable housing or community development. The final report of the National Commission on American Indian, Alaska Native and Native Hawaiian Housing recognized this problem in 1992. The Commission recommeded amending the United States Housing Act to provide for the creation of urban Indian Housing Authorities [IHA's] to address the exclusion of urban Indians from HUD's Indian housing programs.

In the 1990's, a new vehicle for urban Indian empowerment has flowered --urban Indian community development corporations [CDCs]. A primary area of concern for urban Indians today is affordable housing and economic development. Indian community development corporations (CDCs) are now important vehicles for developing affordable housing and creating jobs in many cities around the country. Yet, the only federal program which currenty designates economic development funds for urban Indian organizations is the Administration for Native Americans in the Department of Health and Human Services. Funding for social and economic development strategies in reservation, rural and urban communities is distributed on a competitive basis with a declining share going to urban areas.

PROPOSED OFF-RESERVATION DEMONSTRATION HOUSING PROGRAM FOR URBAN INDIANS

In view of the demonstrated and urgent need for housing assistance for Native Americans living in urban areas, and the paucity of existing federal support for urban Indian CDCs, we propose the creation of a targeted demonstration program to support housing production by Urban Indian Organizations.

Structure of Proposed Program

This 'Off-Reservation Demonstration Housing Program for Urban Indians' would develop 300 units of affordable housing in 10 communities, including a mix of multi-family and Single Room Occupancy (SRO) housing. Grants would be made on a competitive basis by HUD to eligible urban Indian organizations. In order to be eligible, a group would be required show significant support from the urban Indian community in its jurisdiction, and experience providing services to urban Indians. Not less than 51% of the board members of an eligible organizations would have to be Native Americans.

Funding of Proposed Program

The program would require $20 million in apporpiations, including $17,820,000 for development costs, $891,000 for technical assistance to the urban Indian CDCs, and $1,000,000 for staff and support for the ten organizations.

We wish to make it clear that it is our intention that any funds made available for urban Indian housing be in addition to desperately needed funds for housing on reservations. We would suggest either a set-aside within CDBG, or a separate authorization for the program to ensure that it does not detract from funding for reservation affordable housing programs.

The program would significantly strengthen the capacity of existing urban Indian CDCs and provide a basis for further exploration of policy options for delivery of urban Indian housing. It also recognizes that the trust nature of the federal government's relationship with Indian peoples extends to urban Indians. Finally, it builds on the experience of the past two decades in which housing production has most efficiently and effectively been conducted by non-profit CDCs.

CONCLUSION

The housing needs for urban Indians are acute, while federal support for urban Indians and their organizations has been and continues to be virtually non-existent. We believe the current debate regarding the restructuring of Native American housing programs for reservations provides an opportunity to ensure that housing needs of urban Indians, now comprising a majority of the total Indian population, are finally addressed.

We look forward to working with the Committees on this important legislation, and appreciate the opportunity to testify.

Poverty Rate Data on Indian Population in Selected Cities

State	City	Indian Population	Indians in Poverty	Indian Pov. Rate
AZ	Phoenix	18,337	5,574	31.4%
AZ	Tucson	6,371	2,425	39.3%
CA	Fresno	3,681	914	26.0%
CA	Los Angeles	14,919	2,921	20.1%
CA	Oakland	2,325	490	21.1%
CA	Sacramento	4,879	1,275	27.0%
CA	San Diego	7,252	1,068	16.0%
CA	San Jose	5,323	873	16.8%
CO	Denver	5,314	1,872	35.9%
IL	Chicago	6,761	1,559	23.6%
MI	Detroit	3,511	1,603	45.9%
MN	Minneapolis	12,213	6,396	53.9%
NM	Albuquerque	11,457	3,135	28.7%
NV	Las Vegas	2,415	373	15.7%
NY	Buffalo	2,363	1,035	44.3%
NY	New York	22,718	5,475	24.6%
OK	Oklahoma City	19,099	4,624	24.9%
OK	Tulsa	17,326	3,977	23.4%
OR	Portland	5,845	1,808	31.9%
SD	Rapid City	4,891	2,296	49.3%
SD	Sioux Falls	1,427	651	60.6%
TX	Dallas	4,646	954	21.3%
TX	Houston	4,376	963	22.6%
WA	Seattle	7,406	2,328	32.9%

Poverty Rate Data on Indian Population in Selected Cities

State	City	Indian Population	Indians in Poverty	Indian Pov. Rate
WA	Tacoma	3,410	1,138	35.8%
WI	Milwaukee	6,016	1,719	29.0%
	Data on Three Large Cit ies for All Races			
CA	Los Angeles (All races)	3,485,398	643,809	18.9%
IL	Chicago (All races)	2,783,726	592,298	21.6%
NY	New York (All races)	7,322,564	1,384,994	19.3%
	Data on Three Large Re servations			
AZ	White Mountain Apache	9,902	5,152	52.7%
SD	Rosebud Sioux Res.	7,998	4,788	60.4%
WA	Yakima Res.	6,198	2,765	46.1%

NHA Hooghan–Center of Family Growth, Strength and Beauty
NAVAJO HOUSING AUTHORITY

NAVAJO HOUSING AUTHORITY TESTIMONY
TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
AND THE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
OF THE SENATE COMMITTEE
ON BANKING, HOUSING AND URBAN DEVELOPMENT

TESTIMONY OF CHESTER CARL
EXECUTIVE DIRECTOR OF THE NAVAJO HOUSING AUTHORITY
WASHINGTON, D.C.
JUNE 20, 1996

Mr. Chairman and members of the Committee and Subcommittee, I have been directed by the Board of Commissioners of the Navajo Housing Authority to submit written testimony to you on the proposed "Native American Housing Assistance and Self-Determination Act of 1996", which is Title VII to H.R. Bill 2406. I want to write to you on the deplorable housing conditions found on the Navajo Nation and throughout Indian Country. Before I go any further, you must first understand that many Navajo people today continue to live without running water and with wood as their only source of heat, and being rich in their culture, they might not quite understand what you would find deplorable about their housing conditions. And unless you understand the value the Navajo place on family, you will find the low statistical numbers of homelessness on the Navajo Nation confusing. Navajos take in family members before they become homeless regardless of the size of the home. It is not uncommon to find Navajo families as large as eight to twelve members living in a two room house. So you see, to understand our need for housing, you must first come to know us.

The Navajo Nation, like all other Indian Nations in this great land called the United States, have a government to government relationship with the Federal Government. It is unlike any other relationship found between governments. I want you to understand what this relationship means to the Navajo People and to all Indian People. Being sovereign nations in our own right, our forefathers entered into treaties with the great leaders of this Nation. A promise to the Indian is as sacred as the land on which we stand. The treaties were promises. Promises to provide needed services to Indian Nations and Indian people were made. The Navajo in the 1868 treaty between the Navajo Nation and the United States government were promised that the United States would provide for the general health, safety and welfare of the Navajo people. Our forefathers believed you. They had no reason not to. We continue to believe you, even though some of your leaders forgot these promises. We know you will make amends for them. For you too have your dignity to uphold. The world watches you to see how you relate with the native people of your lands. They will follow your example. Native Americans have the same duties to America as any other American citizen. We fought America's wars, we pay our taxes. We want to forget the breaches of treaties committed by leaders before you. We want to start anew. Let us then come together, Nation to Nation, and People to People, to fulfill America's treaties and its trust responsibilities to Indian People.

We support the concepts proposed in the "Native American Housing Assistance and Self-Determination Act

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of 1996". We agree that in line with the government to government relationship the Federal government has with each Indian Tribe, block grant funding for housing should go to Indian Tribes or their tribally designated entities. We agree that Indian housing should be separated from public housing. We agree that Indian tribes should be in charge of their own destiny with the support of the Federal government. We agree that regulations should be drafted with the input of Indian Tribes. And we agree that funds should be authorized for home loan guarantee programs.

However, we are concerned that you may not understand the extreme housing need in Indian Country, and that is the reason for the proposed $650,000,000 to be appropriated annually for fiscal years 1997 through 2001. This amount is grossly inadequate. It is like a drop in the bucket. At least $1.5 billion annually would be needed to make a dent in housing conditions in Indian Country. The Navajo alone total at over 150,000 according to 1990 Census figures. The Navajo Nation has long asserted that these figures grossly under-represent the Navajo population. This same census lists the number of existing houses at 35,316. This number makes no distinction between housing that is decent, safe and sanitary and housing that isn't. Because of the lack of infrastructure on the Navajo Nation, many of the existing housing on the Navajo Nation lack the basic sanitary facilities of electricity, water and sewage disposal. According to a 1990 housing survey on the Navajo Nation, the Navajo Nation had a waiting list of 13,530 families in dire need of homes.

Different from Pubic Housing in its conceptualization, Indian Housing Authorities (IHAs) develop Mutual Help units under their home buyer programs in addition to developing rental units. Having seen that the concept of clustered housing has conflicted with the Navajo traditional way of life and has created problems foreign to Navajo culture, i.e. gangs, violence, drug and alcohol abuse, has brought a realization that the Navajo Housing Authority must do more to develop scattered site housing in the traditional home lands of the Navajo. Along with scattered site housing, comes the need for infrastructure in parts of the Navajo Reservation never before having had water or electricity. Additional funding will be needed for this infrastructure.

No funding for Fiscal Year 1996 has yet been appropriated for development and renovation. In Fiscal Year 1995, it received $29,554,772 for the development of 278 units of housing, reducing the Navajo Housing Authority's waiting list to 3,769. Because of the long waiting list, not all of the 13,530 Navajo families in dire need of homes apply for NHA housing. It received $17,854,599 for the renovation of units, reducing the unmet need to approximately 2,225. As the unmet numbers indicate, these amounts barely meet the needs of the Navajo people. Indian Housing Authorities provide economic opportunities on reservations. The Navajo Housing Authority for example employs over 900 people in its operation, development, renovation and counseling activities. Construction activities generated by the Navajo Housing Authority contribute to economic development on the Navajo Nation.

These are the housing needs of one Indian Nation alone. For too long we have lived with too little. Because it is not the way of our people to complain, our voices have not always been heard. I am writing to you today on behalf of those Indian people that will not complain of their dirt floors and lack of plumbing, and for those who believe that so long as they have any roof over their heads, their basic needs are met.

In the Southwest region of the United States, forty seven Indian Housing Authorities, including the Navajo Housing Authority, came together with their respective Indian tribes to express concerns with the language in the Bill. And although we support the concept of the Act, we feel that some changes need to be made to ensure that Indian tribes are successful in operating their housing programs under the Act. These changes are in the attached SWIHAA resolution and in the attached Navajo Housing Authority resolution.

Thank you Mr. Chairman and committee members for having read my words. I am confident you will not forget my message and that you will deal with Indian Nations in the way in which your forefathers intended you to - as government to government; as People to People. I am looking forward to a new future for all Indian Nations. I am proud to be a part of this future. Indians have a tradition of taking care of their people. We are proud of that tradition. America has adopted many Indian traditions, such as the adoption of the Indian form of government. Rather than having one king, a council of men make decisions. You are those great men. We have also witnessed you adopting another one of our traditions; taking care of your people. Do not forget, we too are your people.

Attachments

NHA Hooghan–Center of Family Growth, Strength and Beauty
NAVAJO HOUSING AUTHORITY

Resolution NHA-2780-96

Requesting the United States Senate to Support Title VII of H.R. Bill 2406, the Native American Housing Assistance and Self-Determination Act of 1996, with Specific Changes.

WHEREAS:

1. Pursuant 6. N.N.C. Sections 605 and 616(b)(3) the Board of Commissioners of the Navajo Housing Authority (NHA) is empowered with the authority to manage the affairs of the NHA with the power to do any and all things necessary or desirable to secure the financial aid and/or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any NHA project; and

2. The NHA has been active in commenting on the proposed Native American Housing Assistance and Self-Determination Act of 1996, currently Title VII to H.R. Bill 2406, and has actively participated in drafting the Southwest Indian Housing Authority Association's (SWIHAA) Resolution and accompanying position paper on the legislation, has prepared Government Services Committee, Intergovernmental Relations Committee and Transportation and Community Development Committee supporting resolutions, has prepared a National American Indian Housing Council (NAIHC) resolution supporting the legislation for presentation at the NAIHC'S annual convention in June 1996, has prepared the Navajo Nation's position on the legislation, and has prepared written testimony to submit to the Senate Committee on Indian Affairs and the Senate Subcommittee on Housing Opportunity and Community Development, and the position of the NHA is incorporated in those documents; and

3. The NHA Board of Commissioners has reviewed Title VII of H.R. Bill 2406 passed by the House on May 9, 1996 and supports the following concepts: the separation of Indian housing from public housing; block grant funding to Indian tribes or their tribally designated entities; the recognition of the government to government relationship between the federal government and Indian tribes; the federal government's trust responsibility to provide safe and decent homes to Indian people; the deregulation of HUD; the involvement of tribal representatives in establishing regulations to carry out the Act; the flexibility to Indian tribes to operate their housing programs without HUD interference; continued funding for the Indian home loan guarantee program; and

4. The NHA has continuing concerns with some of the language in Title VII, and revisions to Title VII are necessary to enable Indian tribes or their tribally designated entities to successfully carry out their housing programs under the Act.

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RESOLUTION NHA-2780-96
June 17, 1996
Page Two

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Commissioners of the NHA hereby requests the United States Senate to support Title VII of H.R. Bill 2406, the Native American Housing Assistance and Self-Determination Act of 1996, with the following changes:

General Comments

1. Change Section 716 to add "and/or their tribally designated entities" at the end of the last sentence of Section 616 (B)(2). It is our understanding that the negotiated rulemaking applies to the entire Act.

2. The requirements for the Local Housing Plan should be made regulatory and not statutory. The requirements should additionally be simplified and not onerous to Indian Tribes or their tribally designated entities.

3. The Act should not subject Indian tribes or their tribally designated entities to the jurisdiction of the federal courts. As recognized by Congress through treaties with Indian tribes and their general course of dealing with Indian tribes, Indian tribes are sovereign nations.

4. The termination of the United States Housing Act of 1937 should end the era of providing for only those Indian families that the federal government has determined to be low income. This mode of thinking has given Indian people the perception that to qualify for housing one must remain low income. As such, we propose to remove all reference to "low income" in the entire Act. The Federal Government has a fiduciary responsibility to provide opportunities for housing for all Native Americans.

5. The Act must have language that protects Indian Housing Authority (IHA) projects currently under an Annual Contributions Contract with the Secretary. No projects should be left in limbo as a result of the passage of the Act.

6. The Act should include language providing for increased funding for the development of streets and access roads to housing projects and provide funding for the reconstruction of streets and for the maintenance and operation of streets and access roads to housing projects.

7. Funding must be adequate to meet the infrastructure needs that accompany the development of housing, so vital for community and economic development in Indian Country.

8. Language must be inserted to honor all current contracts, lease agreements and operation components to protect existing IHA program participants.

9. Language must be added to assure that tax-exempt property under the United States Housing Act of 1937 continue to remain tax exempt, and that all IHA property remain tax exempt.

10. Funding under the Act should be limited to federally recognized Indian tribes and those current IHA's established under the United States Housing Act of 1937. No other state-recognized Indian tribe should be eligible for funding under the Act.

Specific Comments

SECTION 702 - CONGRESSIONAL FINDINGS
Section 702(2) does not sufficiently emphasize the government to government relationship between Indian tribes and the Federal Government and the fiduciary trust responsibility the federal government has to Indian tribes and Indian people. Language stating that the federal government has a government to government relationship with Indian tribes and a fiduciary trust responsibility to Indian tribes and Indian people must replace the current language.

SECTION 711 - BLOCK GRANTS
It is our understanding that Community Development Block Grants (CDBG) are not a part of the Act. This is crucial since CDBG funds provide for a tribe's infrastructure needs.

SECTION 712 (I) - PLANS FOR SMALL TRIBES
The definition of "small tribes" should not be based solely on the number of dwelling units provided for either under this title or the United States Housing Act of 1937, but rather be based on other factors such as population and the need for housing.

SECTION 714 - TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS
Indian tribes or their tribally designated entities should not be subject to Davis Bacon wages. Indian tribes as sovereign nations should have the flexibility to establish their own labor rates consistent with the economic conditions on their respective reservations. As such all reference to Davis Bacon wages should be deleted.

SECTION 715 - ENVIRONMENTAL REVIEW
This section must be deleted in its entirety. The National Environmental Policy Act of 1969 is an act of general applicability and as such should not apply to Indian tribes on their lands. Indian tribes are sovereign nations with the power to enact their own laws. The Navajo Nation has a Navajo Environmental Code which regulates environmental activities on Navajo lands.

SECTION 718 - AUTHORIZATION OF APPROPRIATIONS
Indian country needs at least 1.5 billion dollars appropriated each fiscal year plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor.

The housing needs in Indian country were addressed twenty-five years after the housing needs for the rest of the country were addressed.

SECTION 721 - NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES
Secretary approval should not be required to provide assistance to families who are not low-income, but rather this should be determined by an Indian tribe under its five year plan.

SECTION 726 - CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS, SECTION 727 - LEASE REQUIREMENTS AND TENANT SELECTION, and SECTION 728 - REPAYMENT should be removed from the Act and made regulatory subject to negotiated rulemaking.

SECTION 729 - CONTINUED USE OF AMOUNTS FOR AFFORDABLE HOUSING
This section should delete the words, "considered assistance under this title and"; after the words, "including all reserves not otherwise obligated,". Current IHAA funds should not be considered assistance under the Act since all such funds have been obligated or reserved to address housing needs.

SECTION 742 - ALLOCATION FORMULA
Language prohibiting a cap on the funding allocated to any one Indian tribe should be added. Because the NHA and the Navajo Nation will be immensely impacted by the funding, the NHA must be involved in developing the funding allocation formula.

SECTION 751 - REMEDIES FOR NONCOMPLIANCE
This section should be deleted and made regulatory subject to negotiated rulemaking.

SECTION 754 - PERFORMANCE REPORTS
This section should be deleted and made regulatory subject to negotiated rulemaking.

SECTION 755 - REVIEW AND AUDIT BY SECRETARY
This section should be removed in its entirety and replaced with the following sentence: "The Secretary shall at least on an annual basis require an independent audit pursuant to OMB A87."

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This section should be removed in its entirety and replaced with the following sentence: "Prior to submittal, the Secretary shall make available to the recipient the proposed Congressional Report for a forty-five (45) day review and comment period."

SECTION 764 - TERMINATION OF HOME PROGRAM ASSISTANCE.
HOME Program funds should not be terminated but rather kept separate. Indian tribes should be eligible for HOME grants on the same basis as States.

SECTION 772 - SECURITY AND REPAYMENT
Subsection (a) and (b) should be removed in their entirety and should be made regulatory subject to negotiated rulemaking. The following sentence should be added to subjection ©: "The

Secretary shall not administratively use grant funds provided under this title to guarantee Indian loan guarantee programs."

2. The Board of Commissioners of the NHA hereby directs the Executive Director to submit the NHA's written testimony to the Senate Committee on Indian Affairs and the Senate Subcommittee on Housing Opportunity and Community Development.

CERTIFICATION

Commissioner Sara Sandoval moved that the foregoing Resolution **NHA 2780-96** be adopted and this was seconded by Commissioner Kenneth Maryboy.

Same was passed by the following vote:

AYES: 7

NAYES: 0

ABSTAINED: 0

The Secretary, thereupon, declared and said motion carried and said Resolution **NHA-2780-96** was adopted this **17th** day of **June**, 1996.

Martha H. Garcia, Chairperson
NHA BOARD OF COMMISSIONERS

ATTEST:

Dorothy Lee, Secretary/Treasurer
NHA BOARD OF COMMISSIONERS

Southwest Indian Housing Authority Association
P.O. Box 187, San Carlos, Arizona 85550
(520) 475-2346 (520) 475-2349 FAX

Resolution No. 96-01

Resolution of the Southwest Indian Housing Authority Association Adopting a Position Paper on Title VI (currently Title VII) of HR 2406, April 30, 1996 Draft, the Proposed Native American Housing Assistance and Self-Determination Act of 1996, and Requesting that Congress Make Requested Changes to the Act

Whereas: The Southwest Indian Housing Authority Association (SWIHAA) is a regional association representing forty-seven Indian Housing Authorities (IHAs) in the Southwest region of the United States and is invested with the power to represent the position of its member IHAs; and

Whereas: One of the objectives of SWIHAA is to advocate for the needs of housing for Native American families residing within the jurisdiction of its member IHAs, and

Whereas: SWIHAA has reviewed and intricately examined all drafts of the proposed Native American Housing Assistance and Self-Determination Act of 1996, ending with the April 30, 1996 Draft, and has adopted a position paper on Title VI (currently Title VII) of H.R. 2406, the April 30, 1996 Draft, and such position paper is attached hereto as Exhibit A and made a relevant part hereof, and

Whereas: Revisions to the Act are occurring at a pace faster than SWIHAA can come together to comment on and adopt positions on and as such SWIHAA has not yet had time to comment on the version of the Act passed by the House, but to the extent that the comments in Exhibit A have not been addressed in that version, SWIHAA renews those comments.

NOW THEREFORE BE IT RESOLVED THAT: SWIHAA hereby adopts the Position Paper marked as Exhibit A to Title VI (currently Title VII) of H.R. 2406, April 30, 1996 Draft, the Proposed Native American Housing Assistance and Self-Determination Act of 1996, and further request Congress to make the requested changes to the Act

CERTIFICATION

The foregoing Resolution was enacted by the membership of the Southwest Indian Housing Authority Association on the 21 day of May 1996, by a unanimous vote in favor and none opposed at a special called meeting held in Phoenix, Arizona.

Patsy M Cohoe, President

ATTEST: Joann Mike, Secretary/Treasurer

Southwest Indian Housing Authority Association
P.O. Box 187, San Carlos, Arizona 85550
(520) 475-2346 (520) 475-2349 FAX

EXHIBIT A

POSITION PAPER ON TITLE VI OF H.R. 2406 (April 30, 1996 draft)

May 20-21, 1996

The following are continuing concerns the SWIHAA membership and their respective tribes have on the April 30th, 1996 draft of Title VI of H.R. 2406, the Native American Housing Assistance and Self-Determination Act of 1996.

The SWIHAA membership has the following general concerns regarding the Act:

1. We continue to look forward to working together with the Secretary in issuing regulations implementing the Act a provided for in Section 616. The only change we would make to Section 616 is to add "and/or their tribally designated entities" at the end of the last sentence of Section 161 (B((2). It is our understanding that the negotiated rulemaking applies to the entire Act.

2. A stated before, the requirements for the Local Housing Plan should be made regulatory and not statutory. The requirements should additionally be simplified and not onerous to Indian Tribes or their tribally designated entities

3. The Act should not disadvantage small tribes in that any funding they receive should be sufficient to allow them to continue to operate as a housing entity.

4. The Act should not subject Indian tribes or their tribally designated entities to the jurisdiction of the federal courts. As recognized by Congress through treaties with Indian tribes and their general course of dealing with Indian tribes, Indian tribes are sovereign nations.

5. The termination of the 1937 Housing Act should end the era of providing for only those Indian families that the federal government has determined to be low income. This mode of thinking has given Indian people the perception that to qualify for housing one must remain low income. As such, we propose to remove all references to "low income" in the entire Act. The Federal Government has a fiduciary responsibility to provide opportunities for housing for all Native Americans.

The following are SWIHAA's specific comments on each section:

SECTION III - BLOCK GRANTS
Community Development Block Grant (CDBG) should be provided for separately and not as a part of the Act. It is crucial to protect CDBG funds as a separate source of funding since they provide for a tribe's infrastructure needs.

SECTION 612 - LOCAL HOUSING PLANS
As stated in the general comments this section should be made regulatory. The plan should be similar to the plan requirements of the Comprehensive Grant Program.

SECTION 612 (f) - PLANS FOR SMALL TRIBES
The definition of "small tribes" should not be based solely on the number of dwelling units provided for either under this title or the United States Housing Act of 1937, but rather should be based on other factors such as population and the need for housing.

SECTION 614 - TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS
We continue to insist that the Indian Tribes or their tribally designated entities should not be subject to Davis Bacon wages. Indian tribes sovereign nations should have the flexibility to establish their own labor rates consistent with the economic conditions on their respective reservations. As such all reference to Davis Bacon wages should be deleted.

SECTION 681 - AUTHORIZATION OF APPROPRIATIONS
We maintain that Indian country needs at least 1.5 billion dollars appropriated each fiscal year plus an additional allocation each subsequent fiscal year after 1997 for inflation using the CPI inflationary factor. The housing needs in Indian country were addressed twenty-five years after the housing needs for the rest of the country were addressed.

SECTION 621 - NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES
As stated in the general comments that the Act should provide housing opportunities for all Native American families all references to low income in this section and all other sections of this Act should be deleted.

SECTION 626 - CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS, SECTION 627 - LEASE REQUIREMENTS & TENANT SELECTION, and SECTION 628 - REPAYMENT should be removed from the Act and made regulatory subject to negotiated rulemaking.

SECTION 651 - REMEDIES FOR NONCOMPLIANCE
This section should be deleted and make regulatory subject to negotiated rulemaking.

SECTION 654 - PERFORMANCE REPORTS
This section should be deleted and made regulatory subject to negotiated rulemaking.

SECTION 655 - REVIEW AND AUDIT BY SECRETARY
This section should be removed in its entirety and replaced with the following sentence: "The Secretary shall at least on an annual basis require an independent audit pursuant to OMB A87."

SECTION 657 - REPORTS TO CONGRESS
This section should be removed in its entirety and replaced with the following sentence: "Prior to submittal, the Secretary shall make available to the recipient the proposed Congressional Report for a forty-five (45) day review and comment period."

SECTION 664 - TERMINATION OF HOME PROGRAM ASSISTANCE
HOME Program funds should not be terminated but rather kept separate. Indian tribes should be eligible for HOME grants on the same basis as States.

SECTION 672 - SECURITY AND REPAYMENT
Subsections (a) and (b) should be removed in their entirety and should be made regulatory subject to negotiated rulemaking. The following sentence should be added to subsection (c): "The Secretary shall not administratively use grant funds provided under this title to guarantee Indian loan guarantee programs."

Thank you for providing us the opportunity to provide input into this bill which will affect the lives of Native American families.

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